
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF AGRICULTURE

NO. 1315

28 OCTOBER 2016

NORTH WEST AGRICULTURAL BANK AMENDMENT BILL, 2016

(As introduced in the Provincial Legislature)
(The English text is the official text of the Bill)

(MEMBER OF THE EXECUTIVE COUNCIL FOR READ)

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments
_____ Words underlined with a solid line indicate insertions in existing enactments

BILL

To amend the North West Agricultural Bank Act Act, 1981, so as to effect textual amendments; to insert new definitions and new provisions; and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of the North West Province, as follows:-

Amendment of long title of Act 14 of 1981

1. The long title of the North West Agricultural Bank Act Act, 1981 (Act No. 14 of 1981), hereinafter referred to as the principal Act, is hereby amended by the substitution of the following long title –

“To establish the North West Agricultural [Bank] Fund for the purpose of promoting the agricultural, pastoral, agro-economic and rural development of the North West Province, to this end to render financial assistance in and in connection with farming, agricultural operations and activities and rural development or related enterprises, and to provide for incidental matters.”.

Amendment of section 2 Act 14 of 1981

2. Section 1 of the principal Act is hereby amended –

(a) by the substitution for the definition of “agent” of the following definition:

““agent” means any person who in terms of section 45 acts as or is appointed as an agent of the **[Bank] Fund**;

(b) by the substitution for the definition of “Bank” of the following definition:

““[Bank] Fund” means the North West Agricultural **[Bank] Fund** established by section 3;

(c) by the substitution for the definition of “company” of the following definition:

““company” means a company as defined in the Companies Act, **[1973 (Act 61 of 1973)] 2008 (Act No. 71 of 2008)**, and includes a foreign company;

(d) by the substitution for the definition of “Constitution” of the following definition:

““Constitution” means the Republic of South Africa Constitution, **[1993 (Act 200 of 1993)] 1996**;

(e) by the substitution for the definition of “co-operative” of the following definition:

“**co-operative**” means [any primary, secondary or federal] a co-operative [registered or deemed to be registered as such in terms] as defined in section 1 of the Co-operative Act, [1977 (Act 20 of 1977)] 2005 (Act No. 14 of 2005);

(f) by the substitution for the definition of “Executive Officer” of the following definition:

“**Executive Officer**” means the Executive Officer appointed for the [Bank] Fund in terms of section 19;

(g) by the substitution for the definition of “financial year” of the following definition:

“**financial year**” means the financial year of the [Bank] Fund which shall be from the first day of April of any year to the [thirty first] 31st day of March of the first following year, both days inclusive;

(h) by the substitution for the definition of “responsible Member” of the following definition:

“**responsible Member**” means the Member of the Executive Council responsible for responsible for Agriculture [and Environmental Affairs]; and

(i) by the substitution for the definition of “seasonal advance” of the following definition:

“**seasonal advance**” means a loan whereby funds may, from time to time during the currency of such loan, be drawn from or repaid to the [Bank] Fund at any particular time during such currency shall not exceed such maximum amount as may be determined by the Board.”.

Amendment of section 3 Act 14 of 1981

3. Section 3 of the principal Act is hereby amended by the substitution of the following section:

“3. Establishment of North West Agricultural [Bank] Fund, its objects, powers, functions and duties.—(1) There is hereby established a [Bank] Fund, to be known as the North West Agricultural [Bank] Fund, for the purpose of promoting the agricultural, pastoral, agro-economic and rural development and the promotion and structuring of related enterprises in the North West in accordance with the provisions of this Act.

(2) The North West Agricultural [Bank] Fund shall, under that name be a body corporate with perpetual succession and, for the purposes of carrying on its business and operations and exercising and performing its powers, functions and duties under this Act, be capable in law of suing and being sued, of purchasing or otherwise acquiring and holding and alienating movable and immovable property and acquiring real or other rights thereto or any interest therein, of entering into contracts and agreements and, generally, of doing and performing such things and acts as bodies corporate may by law do and perform, subject to the provisions of this Act.

(3) The head office of the **[Bank] Fund** shall be situated at Mmabatho.

(4) The **[Bank] Fund** shall be managed, controlled and represented by a board of directors as hereinafter provided, and all acts of such board shall be deemed to be acts of the **[Bank] Fund**.”.

(5) The Fund is a Public Finance Management Act, 1999 (Act No. 1 of 1999) Schedule 3C Public Entity with the Board as its Accounting Authority.

Amendment of section 4 Act 14 of 1981

4. Section 4 of the principal Act is hereby amended by the substitution of the following section:

“4. Constitution of Board of Directors of **[Bank] Fund, appointment and termination of appointment of members of the Board and remuneration of members of the Board.—**

(1) Notwithstanding anything to the contrary contained in this Act, the Board of Directors of the **[Bank] Fund** shall consist of—

(a)(i) a chairperson; and

(b)(ii) not less than five and not more than ten additional members, duly appointed in terms of this section; and

(c) an officer in the employment of the **[Bank] Fund**.

(2) The members of the Board shall be appointed by the responsible Member for such period (which shall not exceed three years) and on such terms and conditions as he or she may in respect of each such member determine: Provided that no person shall, subject to the provisions of section 5, be appointed as chairperson of the **[Bank] Fund** for a period of less than three years.

(3) Notwithstanding the preceding provisions of this section, the term of office of the members of the Board may, before the expiration thereof, be terminated by the responsible Member in the circumstances and manner contemplated by section 5; or

(4) Any member of the Board whose term of office has expired, shall be eligible for re-appointment.

(5) The chairperson, additional members of the Board shall be paid such remuneration and allowances and be entitled to such benefits and perquisites as the Board in concurrence with the responsible Member may from time to time determine: Provided that the said remuneration, allowances, benefits and perquisites so determined in respect of a particular chairperson or a particular additional member shall not be reduced or adversely affected during his or her term of office, except under authority of the Law of the Provincial Legislature specifically adopted for that purpose.”.

Amendment of section 11 of Act 14 of 1981

5. Section 4 of the principal Act is hereby amended by the substitution of the following section:

“11. Meetings of the Board.—(1) The meetings of the Board shall be held—

(a) at the head office of the **[Bank] Fund** referred to in section 3 (3), unless the Board decides to hold any particular meeting at some other venue;

(b) on such date and at such time as may be determined by resolution of the Board whenever it is necessary so as to conduct its business and the business of the **[Bank] Fund** expeditiously, but not less than once every three months:

Provided that the first meeting of a newly-constituted Board shall be held at such time and on such date as the responsible Member may by written notice to all members of the Board, determine, which date shall not be later than twenty-one days (Saturdays, Sundays and public holidays excluded) after such constitution of the Board.

(2) The chairperson may at any time call for an extraordinary meeting of the Board if, in his or her opinion it is justified by the circumstances prevailing and shall, upon having been presented with a requisition for that purpose signed by the Executive Officer or by at least two other members of the Board, forthwith call for an extraordinary meeting of the Board, and if the chairperson fails to convene such a lastmentioned meeting within seven days as from such presentation, the Executive Officer or, as the case may be, such two members, may, on the expiration of such seven days, convene an extraordinary meeting.”.

Amendment of section 14(1) of Act 14 of 1981

6. Section 14(1) of the principal Act is hereby amended by the substitution of the following section:

“14. Pecuniary and other interests of members of the Board in matters dealt with by Board.—(1) Subject to the provisions of section 4 (6), a member of the Board shall not be present at any meeting of the Board or any committee thereof, nor be present in the room in which such meeting is held, nor in any way whatsoever take part in the proceedings of the Board or such committee, during the discussion of or voting on—

(a) any matter in which he or she has, directly or indirectly, either by himself or herself or through his or her spouse, partner or business associate or through any person related to him or her within the third degree of consanguinity or affinity, any pecuniary interest; or

(b) any intended or pending legal or arbitration proceedings to which the **[Bank]** Fund is or may become a party and in which any such member has, directly or indirectly, either by himself or herself or through his or her spouse, partner or business associate or through any other person related to him or her within the third degree of consanguinity or affinity, any interest, whether as a party, witness, legal representative or otherwise:

Provided that such a member may, if requested thereto by the Board, be present at such a meeting for the sole purpose of furnishing to the Board, in relation to any matter affected by such interest, such information, particulars or explanations as may be necessary to enable the Board to dispose of the matter in question or to expedite the disposal thereof, whereafter such member shall forthwith leave the meeting in question.”.

Amendment of section 15 of Act 14 of 1981

7. Section 15 of the principal Act is hereby amended by the substitution of the following section:

“**15. Minutes of the Board.**—(1) An officer of the **[Bank]** Fund appointed in terms of section 19, shall prepare and keep the minutes of the proceedings of every meeting of the Board and cause copies thereof to be circulated to all members of the Board.

(2) Every minute prepared in terms of subsection (1), when signed at a subsequent meeting of the Board by the chairperson or the person acting as chairperson in terms of section 9, shall, in the absence of proof of error therein, be deemed to be a true and correct record of the proceedings which it purports to minute, and shall, at any arbitration proceedings or proceedings before a court of law or administrative tribunal, constitute *prima facie* evidence of the proceedings of the Board and the matters it purports to minute.”.

Amendment of section 17 of Act 14 of 1981

8. Section 17 of the principal Act is hereby amended by the substitution of the following section:

“**17. Committees of Board.**—The Board may, for the purposes of the due and proper exercise and performance of the powers, functions and duties conferred and imposed upon it by or in terms of this Act, by resolution establish committees and appoint as members thereof members of the Board and/or officers of the **[Bank]** Fund specified in such resolution, and may likewise extend, enlarge, limit or dissolve any committee so established.”.

Amendment of section 19 of Act 14 of 1981

9. Section 19 of the principal Act is hereby amended by the substitution of the following section:

“19. Executive Officer and other staff of [Bank] Fund.—(1) The Board shall appoint a person approved by the responsible Member as Executive Officer of the [Bank] Fund and may, for the purposes of the due, proper and effective exercise and performance of the powers, functions, duties, business and operations of the [Bank] Fund, appoint such other officers, employees and workmen as it deems necessary, subject to such terms and conditions relating to service, remuneration and perquisites as the Board in consultation with the responsible Member may determine: Provided that the person who, immediately prior to the date of commencement of section 7 of the Agricultural [Bank] Fund of Bophuthatswana Amendment Act, 1986, held the appointment of General Manager in terms of this section as it then existed, shall, as from such date, be deemed to hold the appointment of Executive Officer in terms of this section as amended by the said section 7.

(2) (a) The provisions of the Public Service Act, 1934 (Act 103 of 1994), and any regulation, rules and determinations made and in force thereunder, as amended from time to time (excluding any such determination relating to remuneration or any such regulation, rule or determination relating to any term or condition of service which is inconsistent with any term or condition of service determined under subsection (1)), shall *mutatis mutandis* apply in respect of any person appointed under subsection (1) except in so far as the Board in concurrence with the responsible Member has by any staff by-law amended or substituted the said provisions or the firstmentioned regulations, rules or determinations.

(b) In applying the said Act and the regulations, rules and determinations applicable in terms of paragraph (a), the following words occurring therein, namely—

(i) “Public Service”, shall be construed as a reference to the [Bank] Fund or the service of or with the [Bank] Fund whichever may be appropriate in the context;

(ii) “Government” and “responsible Member” shall be construed as references to the Board;

(iii) “Commission” or “Public Service Commission”, “Secretary” and “head of department” shall be construed as references to the Executive Officer or any other officer of the [Bank] Fund acting under the general or specific instructions or authority of the Executive Officer.

(3) Every person appointed in terms of subsection (1) shall, subject to the provisions of this Act, exercise and perform the powers, functions and duties assigned to him or her by the Board or by an officer of the [Bank] Fund similarly appointed and authorised thereto by the Board.”.

Amendment of section 20 of Act 14 of 1981

10. Section 20 of the principal Act is hereby amended by the substitution of the following section:

“20. Funds of the [Bank] Fund.—The funds of the [Bank] Fund shall consist of—

- (a) the moneys which, prior to the commencement of this Act, had been appropriated by Provincial Legislature for the purposes and business of an agricultural [Bank] Fund for North West;
- (b) such moneys as may from time to time be appropriated to the [Bank] Fund by Provincial Legislature as part of its funds;
- (c) moneys received by the [Bank] Fund on deposit;
- (d) loans raised or overdrafts obtained from any [Bank] Fund or financial institution registered in the Province or elsewhere;
- (e) moneys invested with the [Bank] Fund by or any loans negotiated by the [Bank] Fund with, other States, international bodies, agencies, institutions or financiers;
- (f) bills or debentures issued by the [Bank] Fund in terms of section 21;
- (g) donations or bequests to the [Bank] Fund accepted by it;
- (h) interest derived from the investment of moneys by the [Bank] Fund in terms of section 29 (3);
- (i) interest, fees, charges and moneys payable to the [Bank] Fund in respect of loans and advances in terms of this Act:

Provided that the acquisition of funds for the [Bank] Fund from abroad or from international sources, as contemplated by paragraphs (d) and (e), shall be subject to the prior written approval of the Member of the Executive Council responsible for Finance and Provincial Expenditure.”.

Deletion of section 21 of Act 14 of 1981

11. Section 21 of the principal Act is hereby deleted.

Amendment of section 22 of Act 14 of 1981

12. Section 22 of the principal Act is hereby amended by the substitution of the following section:

“22. Business of the [Bank] Fund and ancillary powers, functions and objects of [Bank] Fund.—(1) Subject to the provisions of this Act, the business of the [Bank] Fund shall be to provide financial assistance—

(a) to farmers or clients by means of—

- (i) long-term loans or advances on first mortgage of immovable property or against such other security as the Board may determine;

(ii) medium-term loans or advances against a hypothec of movable property and, if the Board deems it necessary, such collateral or additional security as the Board may determine; or

(iii) seasonal advances against a pledge of crops growing or to be grown and, if the Board deems it necessary, such additional security as the Board may determine;

(b) to co-operatives, in the form of—

(i) long-term loans or advances on mortgage of immovable property or against such other security and, where applicable, such collateral or additional security, as the Board may determine;

(ii) medium-term loans or advances against a pledge of movable property and, if the Board deems it necessary, such additional security as the Board may determine; or

(iii) seasonal advances for the purchase of production requisites for supply or distribution to members and to finance crops, livestock and produce delivered to the co-operative for marketing under a pool system, or as an agent against a pledge of the said crops, livestock or produce and, if the Board deems it necessary, such additional security as the Board may determine; and

(c) to companies, corporations and other bodies engaged in or concerned with agriculture, the marketing of farm produce or agricultural products or the promotion of agricultural aims or objects approved by the Board, by means of loans or advances for such purposes in connection therewith and for such period and against such security as the Board may determine.

(2) In addition to the business contemplated by subsection (1), the **[Bank] Fund** may

(a) on behalf of the Province approve loans or make advances to farmers or clients;

(b) issue guarantees in the normal course of its business in terms of this Act;

(c) appoint and engage the services of a suitably qualified, specialised and experienced person, company, association of persons, organization or body, to advise the Board in connection with the business, operations and activities of the **[Bank] Fund** and may, unless any such persons are members of the Public Service in terms of the Public Service Act, 1994 (Act 103 of 1994), pay them such remuneration and such allowances in respect of travelling and subsistence expenses incurred, as may be determined by the Board;

(d) offer and operate any current or savings account facilities or any savings scheme and any combined insurance and savings scheme approved by the Board;

(dA) grant loans and make advances to any of the members of its staff appointed in terms of section 19, in accordance with the provisions of the staff by-laws made under section 39A (a);

(e) for the purpose of effecting the discharge of any amount which may be owing to the [Bank] Fund by any debtor at his or her death, and of any additional amount which may be payable in connection therewith, undertake insurance and for the purpose of the insurance so undertaken by it, reinsure itself with any insurer or cause such insurance to be underwritten by any insurer, or may, in lieu of undertaking such firstmentioned insurance, arrange with any insurer to undertake such firstmentioned insurance;

(f) and (g)

[Paras. (f) and (g) deleted by s. 9 (d) of Act No. 23 of 1986.]

(h) act, when directed by the responsible member to do so, as a co-ordinator in all matters; regarding agricultural finance or agro-economics, or rural enterprises, necessary to enhance, promote, foster and protect the interest of the Province in such matters in any international [Bank] Fund ing system; and

(i) generally, perform all such acts and do all such things as may be necessary or incidental for the due and proper exercise and performance of its powers, functions and duties under this Act and the conduct of its business and operations under this Act and the attaining of its purposes and the realisation of its aims and objects as contemplated by this Act.

(3) Furthermore, in addition to the business contemplated in subsections (1) and (2), the Fund may –

(a) initiate, manage, promote and support rural and agricultural development initiatives and projects in the Province;

(b) explore different avenues and consider methods of ensuring food security for the Province;

(c) render technical and financial support and assistance to previously disadvantaged individuals involved in small scale agricultural initiatives in the Province;

(d) facilitate investment in rural and agricultural development in the Province;

(e) provide and encourage the provision of opportunities for persons from disadvantaged communities, to enter and participate in the agricultural industry in the Province;

- (f) address historical imbalances in the provision of infrastructure and in the transfer of skills and resources in the agricultural industry, in the Province; and
- (g) contribute to an enabling environment for job creation in rural and agricultural development in the Province.
- (h) monitor and support rural and agricultural initiatives in the Province;
- (i) provide for efficient support systems for rural and agricultural development in the Province;
- (j) mobilise resources and investment in rural and agricultural development projects targeting previously disadvantaged individuals;
- (k) source funding through any lawful means to finance projects or initiatives aimed at rural and agricultural development in the Province;
- (l) continuously seek, explore and implement new techniques or scientific methods aimed at ensuring food security for the Province;
- (m) provide for skills transfer, capacity building, support and mentorship programmes to previously disadvantaged individuals in rural areas;
- (n) manage programmes aimed at accessing markets to previously disadvantaged individuals in rural areas through strategic partnerships and direct government interventions; and
- (o) perform the functions and carry out the duties and responsibilities imposed by this Act and any other law.”.

Amendment of section 25 of Act 14 of 1981

13. Section 25 of the principal Act is hereby amended by the substitution of the following section:

“25. Execution of certain instruments on behalf of [Bank] Fund, preparation and execution of mortgages, documents of pledge, securities and transfers and exemption from certain duties, fees and charges.—(1) Notwithstanding any provisions to the contrary in any other law—

- (a) any mortgage, document of pledge or other security under this Act, and any transfer of property to which the [Bank] Fund is a party, may be prepared and executed by any officer of the [Bank] Fund appointed by the Board for such purpose and such officer may in regard to such mortgage, document, security or transfer, perform the functions of a conveyancer, irrespective of whether or not he or she has been admitted as such, and all such mortgages, documents, securities and transfer shall, if registrable, be accepted for registration in the deeds registry of the Province;

(b) no stamp duty or transfer duty shall be payable in respect of any transfer of property to the **[Bank] Fund** and no stamp duty or charge or fee of office shall be payable in respect of any document executed on behalf of the **[Bank] Fund** or in respect of any note made, at the request of the **[Bank] Fund**, on any document in the deeds registry of the Province or in respect of the cancellation of such a note;

(c) no certificate, document or instrument issued by the **[Bank] Fund** shall be subject to stamp duty or any fee of office or charge whatsoever, nor shall the **[Bank] Fund** be liable for the payment of any search or inspection fee in the deeds registry or any office of a Department of State of the Province; and

(d) no stamp duty shall be payable in respect of the issue of debentures in terms of section 21.

(2) Subject to the provisions of subsections (3) and (4), every contract, agreement, authority, approval and any other document or instrument, shall have been duly executed for or on behalf of the **[Bank] Fund** where it complies with the provisions of this Act in all other respects and has been signed by the Executive Officer or any other officer of the **[Bank] Fund** duly authorised thereto, whether generally or specifically, by resolution of the Board.

(3) The Executive Officer and any other officer of the **[Bank] Fund** acting in the stead or under the authority of the Executive Officer may, in his or her discretion but subject to the provisions of this Act, execute or prepare, and sign, any such document or instrument as may be necessary or expedient for the everyday administration and affairs of the **[Bank] Fund**.

(4) All cheques and other negotiable instruments drawn on the **[Bank] Fund** shall be signed by the Executive Officer and any other officer of the **[Bank] Fund** duly authorised thereto by resolution of the Board, or by any two other officers of the **[Bank] Fund** so authorised.”.

Deletion of section 27 of Act 14 of 1981

14. Section 27 of the principal Act is hereby deleted.

Amendment of section 28 of Act 14 of 1981

15. Section 28 of the principal Act is hereby amended by the substitution of the following section:

“28. Interest payable in respect of loans or advances by [Bank] Fund.—(1) The rate of interest payable to the **[Bank] Fund** in respect of any loans or advances granted or made in terms of this Act shall from time to time be determined by the Board: Provided that—

(a) in determining a rate of interest in terms of this subsection the Board shall ensure that the rate of interest is sufficient so as to ensure that the business of the **[Bank] Fund** does not operate at a financial loss; and

(b) in determining the rate of interest as contemplated by the preceding provisions of this section, the Board may determine differential rates of interest in respect of such different classes or categories of persons, as may be stipulated by the Board.

(2) If any amount owing to the **[Bank] Fund** for a loan or advance in terms of this Act is paid on a date earlier than the due date for payment of any instalment and/or interest thereon, the **[Bank] Fund** shall be entitled to and the debtor shall be liable for interest in respect of such amount up to the date upon which the payment in question is made, and in the case of any such payment made after the date on which it is due to have been paid, the **[Bank] Fund** shall be entitled to and the debtor shall be liable for interest in respect of such amount up to the date on which such late payment was made.”.

Amendment of section 29 of Act 14 of 1981

16. Section 29 of the principal Act is hereby amended by the substitution of the following section:

“29. Reserve fund of the **[Bank] Fund.**—(1) The **[Bank] Fund** shall establish a reserve fund which shall from time to time be credited with the surplus of the income of the **[Bank] Fund** over its expenditure at the end of the financial year.

(2) Any deficit in the books of the **[Bank] Fund** at the end of the financial year and any loss which may arise in consequence of any transactions or the business operations of the **[Bank] Fund** shall be made good from the reserve fund unless and in so far as such deficit or loss is, in the circumstances determined by the responsible Member, defrayed by the Government of the Province from moneys specially appropriated by Provincial Legislature for that purpose.

(3) The moneys standing to the credit of the fund at the end of a financial year may, in so far as it is not required for any purpose mentioned in subsection (2) and to such extent as may be determined by the Board, be invested on call or deposit with any general or commercial **[Bank] Fund** or any building society within the Province or may, if deemed necessary or expedient by the Board, be merged with the liquid assets of the **[Bank] Fund**.

(4) The **[Bank] Fund** shall not be liable for the payment of income tax or any other tax on any surplus of the **[Bank] Fund** over its expenditure as reflected at the end of the financial year in respect of such year.

Amendment of section 30 of Act 14 of 1981

17. Section 30 of the principal Act is hereby amended by the substitution of the following section:

“30. [Bank] Fund may utilize its funds in connection with remuneration of, and pensions and medical aid benefits for members of the Board and the staff of the [Bank] Fund.—

(1) The remuneration, allowances and perquisites of the chairperson and other members of the Board and of the officers, employees and workmen of the [Bank] Fund appointed in terms of section 19 and of any adviser of the [Bank] Fund and all other expenditure incurred by the [Bank] Fund in terms of this Act, shall be paid out of the funds of the [Bank] Fund.

(2) The [Bank] Fund may from its funds contribute towards any pension fund or scheme and any medical aid scheme established or arranged for the benefit of the members of the Board and the officers, employees and workmen of the [Bank] Fund and the dependents of any aforementioned person in terms of and in accordance with the provisions of section 22 (g) and the regulations referred to in that section.”.

Amendment of section 31 of Act 14 of 1981

18. Section 31 of the principal Act is hereby amended by the substitution of the following section:

31. [Bank] Fund to keep proper records and books of account, and submission of annual report and financial statements.—(1) The Board shall cause proper records and books of account to be kept, in accordance with standard accounting practice and procedure, of all financial transactions concluded by and all loans and advances granted and made by and all interest, payments, moneys, deposits and securities received, expended and held by and accrued and owing to or by the [Bank] Fund, and of all funds raised by the [Bank] Fund (and the origin thereof), during every financial year.

(2) There shall be submitted to the responsible Member, not later than one hundred and twenty days after the end of each financial year—

(a) a full report by the chairperson of the Board of all the business operations and activities of the [Bank] Fund during such financial year; and

(b) fully audited financial statements comprising a statement which sets out in full the state of the funds and the assets and liabilities of the [Bank] Fund as at the end of the said financial year, and a statement which sets out the income and revenue and the expenditure of the [Bank] Fund during such financial year.”.

Amendment of section 32 of Act 14 of 1981

19. Section 32 of the principal Act is hereby amended by the substitution of the following section:

“32. Audit.—(1) The books and records of account and financial statements of the [Bank] Fund, as well as the report contemplated by section 31 (1) (a), shall be audited annually, as the Auditor General may determine, by the Auditor General or a practising public accountant and auditor appointed by him or her for that purpose, at the conclusion of which audit the auditor concerned shall furnish his or her report to the Board.

(2) Any person appointed in terms of subsection (1) to perform an audit in respect of the affairs of the [Bank] Fund, shall at all reasonable times during his or her audit have a free right to inspect, examine and check and verify all books, accounts, records, files, documents, registers, vouchers, invoices, receipts, certificates, cash and securities and any assets of the [Bank] Fund and has, for such purposes, a free right of access to any office, vault, building and place, where anything hereinbefore mentioned is filed, kept, prepared or issued, and where applicable, to make such copies thereof and such extracts therefrom as he or she may deem fit, and to question or demand an explanation from any member of the Board and any officer, employee or workman of the [Bank] Fund in connection with anything hereinbefore mentioned, and any such member, officer, employee and workman shall co-operate with and render to any person so appointed all such assistance as may be necessary or required by him or her, for the purpose of exercising any right and power conferred upon him or her in terms of this section.”.

Amendment of section 33 of Act 14 of 1981

20. Section 33 of the principal Act is hereby amended by the substitution of the following section:

“33. Report of chairperson of the Board and financial statements of the [Bank] Fund to be tabled in the Provincial Legislature.—The responsible Member shall, within fourteen days after he or she has received the audited report and financial statements contemplated by section 31 (2), lay such report and statements on the table in the Provincial Legislature, if the Provincial Legislature is then in session, or, if it is not then in session, within fourteen days after the commencement of its next ensuing session.

Amendment of section 34 of Act 14 of 1981

21. Section 34 of the principal Act is hereby amended by the substitution of the following section:

“34. Board’s power to effect variations in respect of loans and advances granted or made by it.—The Board may at any time extend the period for the repayment of any loan or advance granted or made by it, increase or reduce any rate of interest applicable to loans and/or advances (including existing loans and/or advances) and, upon written application by or with the written consent of the debtor, in respect of any loan or advance granted or made by the [Bank] Fund —

(a) reduce the period of repayment of such loan or advance;

(b) suspend the obligation of capital redemption for such period as may be determined by the Board;

(c) act in terms of both paragraphs (a) and (b); or

(d) vary the instalments prescribed, for the repayment of such loan or advance in terms of section 24 (1) (b):

Provided that where, subsequent to the variation of the terms of an agreement between the [Bank] Fund and a debtor in terms of any of the preceding provisions of this section, such debtor is guilty of a breach of the terms as so varied, the Board may revert to the terms which governed such agreement prior to such variation, which shall revive when the Board, by written notice to such debtor, informs him or her as to the reversion.”.

Amendment of section 36 of Act 14 of 1981

22. Section 36 of the principal Act is hereby amended by the substitution of the following section:

“36. Powers of Board to ascertain and ensure proper application of loan or advance by debtor and to acquire certain statements from debtor.—(1) Whenever the [Bank] Fund has granted or made any loan or advance in terms of the provisions of this Act, the Board may—

- (a) make, or cause to be made by any of its officers or agents or to any other person, acting upon its written authority, such inspection as the Board may deem necessary so as to ascertain whether or not the loan or advance is being, or has been, applied by the debtor for the purpose for which and in accordance with the terms and conditions upon and subject to which such loan or advance was granted or made;
- (b) require any particular farmer or client, company, corporation, co-operative or other body to whom or to which any loan or advance was granted or made, to submit to the Board such financial and other statements as may be determined by the Board at bi-annual intervals or such shorter intervals as may be likewise determined.

(2) Any officer, agent or other person authorized by the Board to make the inspection in terms of subsection (1) (a), shall for such purpose have the right of access to all records, books, documents, invoices, receipts, statements, and vouchers and all movable and immovable property of the debtor, necessary for the purposes of such inspection, and the right to make the necessary copies thereof and extracts therefrom.

(3) Any refusal on the part of the debtor to allow, or any refusal otherwise relating to the carrying out of an inspection in terms of subsection (1) (a), any conduct on his or her part whereby he or she wilfully hinders or obstructs the person carrying out such inspection in terms of that subsection and subsection (2), and any failure of the debtor to comply with any requirement of the Board in terms of subsection (1) (b) shall, for the purpose of this Act, be deemed to be a breach of the terms and conditions upon and subject to which the loan or advance was granted or made.”.

Amendment of section 37 of Act 14 of 1981

23. Section 37 of the principal Act is hereby amended by the substitution of the following section:

“37. Procedure which may be followed by Board on misapplication of loan or advance by debtor.—Whenever, after an inspection in terms of section 36 has been made the Board is satisfied that any sum of money comprising the whole or any part of the loan or advance to a debtor has not been applied for the purposes for which or in accordance with the terms and conditions upon and subject to which such loan or advance was granted or made, the Board shall, by written notice order such debtor to apply an amount equal to such sum to such purposes or in accordance with such terms and conditions (as the case may be) within the time specified therefor in such notice, or that an amount equal to such sum together with interest thereon up to the date of such notice, be repaid to the [Bank] Fund within the time specified in such notice, and any amount which, by virtue of such a notice, has to be repaid to the [Bank] Fund, shall as from the date of such notice be a debt due and payable to the [Bank] Fund.”.

Amendment of section 38 of Act 14 of 1981

24. Section 38 of the principal Act is hereby amended by the substitution of the following section:

“38. Withdrawal and recalling of loans and advances and seizure and realization by [Bank] Fund of assets mortgaged, hypothecated or deemed to be pledged to the [Bank] Fund.—(1) Whenever any debtor—

(a) fails to pay any amount payable in respect of a loan or advance in terms of this Act on or before due date;

(b) commits any act of insolvency in terms of the provisions of section 8 of the Insolvency Act, 1936, (Act 24 of 1936), or is sequestrated by virtue of an order of court in terms of that Act or assigns his or her estate for the benefit of his or her creditors;

(c) has been convicted of any offence and sentenced to a term of imprisonment without the option of a fine;

(d) in the opinion of the Board arrived at after the carrying out of any inspection in terms of section 36, does not apply the loan or advance for the purpose for which, or in accordance with the terms and conditions upon and subject to which, such loan or advance was granted or made or does not expend it economically, provided the Board has not already acted in terms of section 37;

(e) fails to comply with any notice in terms of section 37;

(f) does not comply with or is in breach of any term or condition stipulated or imposed in respect of the loan or advance in terms of section 24 (1) (b) or any provision of this Act relating to the duties of the debtor regarding such loan or advance;

(g) has been declared mentally ill, or is detained as a mentally ill patient in terms of the Mental Health Act, 1973 (Act 18 of 1973), or is declared by a competent court to be incapable of managing his or her own affairs;

(h) being a company, corporation, co-operative or any other association of persons (irrespective of whether or not such association is a juristic person), is being wound-up or placed in liquidation or under judicial management or is dissolved by or in terms of any law, or when any director, majority shareholder or member of the controlling body thereof is convicted of any offence for which he or she has been sentenced to a term of imprisonment without the option of a fine;

(i) has not, within the time specified by the Board (if any) for the application of the loan or advance, or, if no such time has been so specified, within a reasonable time after such loan or advance has been granted, applied such loan or advance on a substantial scale;

(j) has been convicted of an offence under section 44,

the board may, if such loan or advance has not yet been paid over to the debtor (where appropriate) withdraw its approval of such loan or advance and refuse payment thereof to the debtor or, where it has already been so paid over, act in terms of subsection (2).

[(2) The Board may, in the circumstances contemplated by subsection (1) where the loan or advance has already been paid over to the debtor, by written notice addressed to the debtor, recall the said loan or advance in whole, and require the debtor to repay such loan or advance together with interest thereon up to the date of such notice within the time specified therefor in such notice, and in the event of default of payment on such specified date, the Board may in writing and under the official seal of the Bank, require the messenger of the court or any other person designated by the Board to seize—

(a) in the case where such loan or advance has been secured by mortgage, the immovable property encumbered thereby; or

(b) in the case where such loan or advance has been secured by a deed of hypothecation of movable property, or where any other form of security has been given, the property encumbered by such deed or constituting such other form of security,

without recourse to a court of law, and, irrespective of whether or not such messenger of the court or such other person is a licensed auctioneer, to sell such property by public auction on such date, and at such time and place and on such conditions as the Board may determine, of which at least fourteen days notice has been given in the Provincial Gazette and in a newspaper circulating in the district where the said property is situated or, as the case may be, where the said property was kept or used before such seizure, or the Board may itself sell the property so seized by public tender on such conditions as it may determine: Provided that the provisions of this section shall not be construed so as to derogate from the provisions of subsection (4).]

(3) If the proceeds of any sale of property in terms of subsection (2), after the deduction of the costs of the seizure and sale thereof, exceed the amount to be repaid to the **[Bank] Fund** with the amount of interest thereon as contemplated by that subsection, the balance shall be paid over to the debtor or any person who is in law entitled to receive such payment, and where such proceeds, after such deductions, are less than the sum of the amount so repayable and interest thereon as hereinbefore contemplated, such proceeds shall first be applied towards reducing the amount of interest payable to the **[Bank] Fund** before being applied in redemption of capital, and the **[Bank] Fund** shall have a claim against the debtor or his or her estate (as the case may be) in respect of the deficit.

(4) (a) If the estate of anyone to whom a loan or advance has been granted or made under this Act is sequestrated or if he or she has assigned his or her estate for the benefit of his or her creditors or if a compromise is effected with his or her creditors, no movable property hypothecated in terms of section 27, shall vest in the Master of the Supreme Court or the trustee or the assignee or the liquidator (as the case may be) unless the Board notifies such Master or trustee or assignee or liquidator as provided for in paragraph (c).

(b) The Board may after giving written notice to the Master or the trustee or the assignee or the liquidator, as the circumstances may require, cause the said hypothecated property to be sold in the manner provided by subsections (2) and (3).

(c) If the Board elects not to deal with the hypothecated movable property in terms of paragraph (b), it shall notify the Master or the trustee or the assignee or the liquidator, as the circumstances may require, accordingly, whereupon that property shall vest in the Master or the trustee or the assignee or the liquidator (as the case may be) who shall deal with such property as if this subsection had not been enacted: Provided that such property shall be deemed to have been pledged to the **[Bank] Fund** as security for the due fulfilment by the debtor of his or her obligations under the hypothec, in the same manner as if it had been delivered to the **[Bank] Fund** as a pledge.

Amendment of section 39 of Act 14 of 1981

25. Section 39 of the principal Act is hereby amended by the substitution of the following section:

“39. Regulations.—(1) Subject to the approval of the responsible Member, the Board may make regulations not inconsistent with the provisions of this Act relating to—

- (a) the establishment and dissolution of branches and agencies of the [Bank] Fund, and the management, supervision and control of the [Bank] Fund and any agency and branch thereof;
- (b) the issue of bills and debentures by the [Bank] Fund in terms of section 21, and the other matters connected therewith as contemplated by that section;
- (c) the period of repayment of loans and advances;
- (d) the form of and forms for or in connection with any application in terms of this Act;
- (e) the fees payable by an applicant in respect of any application in terms of this Act, and in respect of the valuation of property and the preparation of documents by or on behalf of the [Bank] Fund for any applicant to or debtor of the [Bank] Fund for the purposes of this Act;
- (f) the rate or rates of interest applicable in respect of moneys owing to the [Bank] Fund, and the alteration of any such rate of interest;
- (g) any matter which, in terms of this Act, shall or may be prescribed or determined by the Board and any other matter under the jurisdiction of the Board in so far as any such matter, in the opinion of the Board, affects or will or is likely to affect persons in their transactions or dealings with the [Bank] Fund.

(2) Regulations made in terms of subsection (1) shall be published for general information in the *Provincial Gazette*, and may, subject to the approval of the responsible Member, be made with retrospective effect.

(3) Every regulation made in terms of subsection (1) shall be laid on the table of the Provincial Legislature within fourteen days of its publication in the *Provincial Gazette*, if the Provincial Legislature is then in session, or, if it is not then in session, within fourteen days after the commencement of its next ensuing session.”.

Deletion of section 39A of Act 14 of 1981

26. Section 39A of the principal Act is hereby deleted.

Amendment of section 40 of Act 14 of 1981

27. Section 40 of the principal Act is hereby amended by the substitution of the following section:

“40. Circumstances in which [Bank] Fund may hold land.—It shall not be lawful for the [Bank] Fund to hold land other than—

(a) such land as may be required for any of its business premises or the housing of staff;

(b) such land as may be acquired for technical, experimental or training purposes;

(c) such land as was mortgaged to the [Bank] Fund and was acquired as a result of foreclosure of the mortgage, or otherwise on account of debt: Provided that all such land shall be sold by the [Bank] Fund at the earliest favourable opportunity upon such terms and conditions as may be determined by the Board, and any such terms and conditions may allow for the purchase price or any portion thereof to be secured by a mortgage bond over the land in question in favour of the [Bank] Fund and any amount so secured shall for the purposes of this Act be deemed to be a loan or advance granted or made thereunder and shall be subject, *mutatis mutandis*, to the provisions of this Act relating to loans and advances.”.

Amendment of section 40A of Act 14 of 1981

28. Section 40A of the principal Act is hereby amended by the substitution of the following section:

“40A. Restriction of liability of members of the Board.—No member of the Board shall be liable for any loss or damage suffered by the [Bank] Fund if such loss or damage is caused by or is the result of any *bona fide* act or omission by such a member in the exercise or performance of any power, function or duty conferred or imposed on him or her by or in terms of this Act.”.

Amendment of section 41 of Act 14 of 1981

29. Section 41 of the principal Act is hereby amended by the substitution of the following section:

“41. Certain matters of [Bank] Fund privileged and confidential, and provisions relating to the maintenance of secrecy.—(1) Save as may be otherwise provided for in this Act, all documents, books, accounts, records and the contents thereof and all information and data of the [Bank] Fund relating to the conducting of the business, operations and affairs of the [Bank] Fund and the meetings, discussions and proceedings of the Board in this regard, and all information regarding the financial position of any debtor of the [Bank] Fund, shall be privileged and of a confidential nature and shall not be disclosed or made available to any person, except—

(a) in the circumstances and for the purposes contemplated by sections 31, 32 and 33; and

(b) to the responsible Member or any person authorised in this regard by the responsible Member; or

(c) upon an order of a competent court.

(2) The chairperson and all other members of the Board and all officers, employees and workmen of the **[Bank] Fund** shall, upon assuming office or upon their appointment (as the case may be), under oath or affirmation in a form to be prescribed by the Board, make a declaration of secrecy before a justice of the peace or commissioner of oaths in regard to all matters of the **[Bank] Fund** which are privileged and confidential in terms of subsection (1) and shall—

(a) maintain and aid in maintaining the secrecy of all such matters of which they have or acquire knowledge in the exercise and performance of their official powers and duties in terms of or by virtue of the provisions of this Act; and shall not, except in so far as it is necessary or expedient for the exercise and performance of such powers and duties or for the business of the **[Bank] Fund** to communicate or disclose such matters to the chairperson or any other member of the Board, or any officer, employee or workman of the **[Bank] Fund**, disclose any information relating to such matters to any person;

(b) not apply or make use of any information or knowledge in connection with any matter of the **[Bank] Fund** which is privileged and confidential in terms of subsection (1) otherwise than for the due and proper exercise and performance of their powers, functions and duties in terms of and by virtue of the provisions of this Act and for the business operations and affairs of the **[Bank] Fund**.

(3) The provisions of subsection (2) shall *mutatis mutandis* apply in respect of any adviser, agent, inspector and valuator of the **[Bank] Fund**.

(4) For the purposes of subsection (2), the oath or affirmation contemplated thereby may be administered—

(a) by the chairperson of the Board and every other member thereof, after such chairperson or member has made the declaration of secrecy in accordance with the provisions of that subsection; and

(b) to any member of the staff of the **[Bank] Fund**, by any officer of the **[Bank] Fund** duly authorised thereto by a resolution of the Board, who has already made the declaration in terms of subsection (2).

(5) Any person who contravenes or fails to comply with the provisions of subsection (1) and any person who, after having made a declaration of secrecy in terms of subsection (2), contravenes the provisions of paragraph (a) or (b) of the lastmentioned subsection, shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”.

Amendment of section 42 of Act 14 of 1981

30. Section 42 of the principal Act is hereby amended by the substitution of the following section:

“42. Offences and penalties in connection with bribery and corruption in relation to loans and advances and applications therefor.—(1) Any member of the Board, any member of the staff of the **[Bank] Fund** and any adviser, agent, inspector or valuator of the **[Bank] Fund**, who receives, whether directly or indirectly, any fee or reward, other than that which may be authorised under this Act or any other law from any person in respect of, or in connection with, any loan or advance under this Act or an application for such loan or advance, shall be guilty of an offence and liable on conviction to a fine not exceeding eight hundred rand or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

(2) Any person who, in respect of or in connection with any loan or advance under this Act, or any application for such loan or advance, bribes or attempts to bribe, or corruptly influences or attempts corruptly to influence the chairperson or any other member of the Board or any member of the staff of the **[Bank] Fund** or any adviser, agent, inspector or valuator of the **[Bank] Fund**, shall be guilty of an offence and liable on conviction to a fine not exceeding eight hundred rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.”.

Amendment of section 43 of Act 14 of 1981

31. Section 43 of the principal Act is hereby amended by the substitution of the following section:

“43. Certain persons debarred from acquiring land or other property of the [Bank] Fund in certain cases.—(1) No member of the Board, no member of the staff of the **[Bank] Fund**

and no adviser, agent, inspector or valuator of the **[Bank] Fund** may acquire, whether directly or indirectly, any land or other property of the **[Bank] Fund** acquired by the **[Bank] Fund** as a result of foreclosure of a mortgage or otherwise on account of debt.

(2) Any acquisition of land or other property of the **[Bank] Fund** in contravention of subsection (1), shall be null and void *ab initio*.”

Amendment of section 44 of Act 14 of 1981

32. Section 44 of the principal Act is hereby amended by the substitution of the following section:

“44. Offences and penalties applicable in respect of applicants to and debtors of the **[Bank] Fund.—**(1) Anyone who—

(a) wilfully applies any loan or advance granted or made to him or her by the **[Bank] Fund** for any purpose other than that for which it was granted or made;

(b) wilfully fails to disclose to the **[Bank] Fund** any material information in his or her possession or makes any statement or representation knowing it to be false, when required in terms of or by virtue of this Act to make any statement or to disclose any facts or information;

(c) obtains financial assistance from the **[Bank] Fund** in terms of this Act through fraud or false representations knowingly made by him or her;

(d) after having obtained financial assistance from the **[Bank] Fund** in terms of this Act, without the written consent of the **[Bank] Fund**, wilfully destroys, damages, consumes or disposes of—

(i) any property, thing or right given by him or her as security to the **[Bank] Fund** for such financial assistance;

(ii) anything deemed to be pledged to the **[Bank] Fund** in terms of section 27 (4) or (5),

or who, in the case of property hypothecated to the **[Bank] Fund** in terms of section 27 or deemed thereunder to have been pledged to the **[Bank] Fund**, gives such property in pledge to any other person, or removes any such property from the land where it is by agreement with the Board, to be kept;

(e) is, by reason of his or her conduct, in terms of section 36 (3) deemed to be in breach of the terms and conditions subject to which a loan or advance was granted or made,

shall be guilty of an offence and liable on conviction to a fine not exceeding four hundred rand or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

(2) If at a trial in respect of any contravention of subsection (1) (d) it is proved that the accused failed on the demand of any person designated by the Board for that purpose, to produce the movable property hypothecated or any part thereof, the accused shall be presumed to have disposed of, destroyed, consumed or removed the movable property, or part thereof, in question (as the case may be) according to the charge, unless and until the contrary is proved.”.

Amendment of section 45 of Act 14 of 1981

33. Section 45 of the principal Act is hereby amended by the substitution of the following section:

45. Agents of the [Bank] Fund.—(1) All such magistrates, postmasters and officers of the Department of Agriculture and Environmental Affairs of the Province as may be designated by the Board in consultation with the Member of the Executive Council responsible for Safety and Security and Agriculture and Environmental Affairs respectively or by the nominee of such Member of the Executive Council, as well as the registrar of cooperatives, shall generally act as agents of the [Bank] Fund in accordance with such procedures, rules, terms and conditions as may be prescribed and imposed by the Board and shall on behalf of the Board perform all such investigations and inspections and submit to the Board such reports and recommendations as the Board may from time to time in respect of any particular applicant to or debtor of the [Bank] Fund in any case referred to such a magistrate, postmaster or officer or such registrar, require.

(2) The Board may, in addition to or in lieu of any person referred to in subsection (1), appoint any other person or any company, firm, or agricultural consultant as agent of the [Bank] Fund for the purposes mentioned in that subsection.

(3) The Board may—

(a) notwithstanding any contrary provisions of the Public Service Act, 1994 (Act 103 of 1994), or any other law, pay to any magistrate and any postmaster designated in terms of subsection (1), in addition to any remuneration and emoluments payable to him or her in terms of that Act, such allowance as may be determined by the responsible Member;

(b) pay any person, company, firm or agricultural consultant appointed in terms of subsection (2), such remuneration (which may be on a commission basis) as may be determined by the Board.

(4) Any magistrate or postmaster designated in terms of subsection (1), may authorise or direct any member of his or her staff to perform on his or her behalf any functions or all the investigations and inspections entrusted to him or her in terms of or by that subsection or to prepare and submit on his or her behalf all reports and recommendations required of him or her in terms of or by such subsection, and in such event the provisions of subsection (3) (a) shall *mutatis mutandis* apply in respect of any such staff member.”.

Amendment of section 47 of Act 14 of 1981

34. Section 47 of the principal Act is hereby amended by the substitution of the following section:

“**47. Short title.**—This Act [**shall be**] is called the North West Agricultural [**Bank**] Fund Act, 1981.”.

Short title

35. This Act is called the North West Agricultural Bank Amendment Act, 2016.

MEMORANDUM ON THE OBJECTS OF THE NORTH WEST AGRICULTURAL BANK AMENDMENT BILL, 2016

1. BACKGROUND

1 The Bill seeks to amend the North West Agricultural Bank Act, 1981(Act 14 of 1981). In line with the Rebranding, Repositioning and Renewal of the Bokone Bophirima Province through the five concretes namely, Agriculture, Culture and Tourism (ACT), Villages, Townships and Small Dorpies (VTSD), Setsokotsane, Reconciliation, Healing and Renewal as well as Saamtrek-Saamwerk philosophy a policy decision was taken recently by the MEC for READ to create a special purpose vehicle to assist farmers adversely affected by the effects of drought in the Province.

As part of the policy position contemplated in paragraph 1 above, a need to utilize an existing special purpose vehicle instead of creating a completely new entity has been identified as the most viable option, hence the resuscitation of the North West Agricultural Bank was considered. The policy option is in line with the EXCO Resolution to restructure and streamline public entities in the Province, taken on 15 December 2014.

It has however emerged that the North West Agricultural **Bank** Act, 1981, which predates the Constitution, 1996 and the Banks Act, 1990, is not in line with the relevant provisions of the Banks Act, 1990 and therefore might also be fall foul of section 146 of the Constitution, 1996, as it is in conflict with National Framework Legislation.

In order to avert potential conflict with the Banks Act, an amendment to the North West Agricultural Bank Act, 1981(Act 14 of 1981), so as to convert the North West Agricultural Bank into a Fund, is imperative.

2. CLAUSE BY CLAUSE EXPLANATION

In summary, the Bill provides as follows –

Clause 1:

Clause 1 amends the longtitle to the North West Agricultural Bank Act, 1981(Act 14 of 1981),

Clause 2:

Clause 2 amends section 2 of the North West Agricultural Bank Act, 1981(Act 14 of 1981), thereby redefining the Bank as a Fund and also redefining certain terms to be in line with post 1994 legislative framework,

Clause 3:

Clause 3 amends the North West Agricultural Bank Act, 1981(Act 14 of 1981), affirms the re-establishment of the North West Agricultural Bank as the North West Agricultural Fund and further reaffirms the Fund is a Public Finance Management Act, 1999 (Act No. 1 of 1999) Schedule 3C Public Entity with the Board as its Accounting Authority.

Clauses 4 to 10:

Clauses 4 to 10 amend sections 4, 11, 14, 15, 17, 19 and 20 of the North West Agricultural Bank Act, 1981(Act 14 of 1981), by changing any reference of bank, to that of Fund.

Clause 11:

Clause 11 deletes section 21 of the North West Agricultural Bank Act, 1981(Act 14 of 1981), which relates to bills and debentures issued by Banks and Companies only, and guarantee by Government of foreign funds raised by a Bank. This reaffirms that the Fund is neither a bank nor a company.

Clauses 12:

Clause 12 amend sections 22 of the North West Agricultural Bank Act, 1981(Act 14 of 1981), by changing any reference of bank, to that of Fund and by broadening the scope of the Fund to that of a developmental special purpose vehicle, rather than being a financial aid institution.

Clauses 13:

Clause 13 amend section 25 of the North West Agricultural Bank Act, 1981(Act 14 of 1981), by changing any reference of bank, to that of Fund.

Clause 14:

Clause 14 deletes section 27 of the North West Agricultural Bank Act, 1981(Act 14 of 1981), which deals with security for loans and advances by the Fund, stating that no loan or advance may be granted or made by the Fund except on the security of a mortgage of land or a real right in land in the Province or of a deed of hypothecation of movable property.

Clauses 15 to 25:

Clauses 15 to 25 amend sections 28 to 39, as amended of the North West Agricultural Bank Act, 1981(Act 14 of 1981), by changing any reference of bank, to that of Fund. Clause 24 further deletes section 38(2) of the North West Agricultural Bank Act, 1981(Act 14 of 1981), which has been declared inconsistent with section 34 of the Constitution and invalid to the extent set out in the Constitutional Court Order published under Government Notice R.586 in *Government Gazette* 21266 of 15 June 2000.

Clauses 26:

Clauses 26, deletes section 39A of the North West Agricultural Bank Act, 1981(Act 14 of 1981). The North West Agricultural Fund is not constitutionally empowered to make by-laws. Only municipalities can make by-laws.

Clauses 27 to 34:

Clauses 27 to 34 amend sections 40 to 45 and 47, as amended of the North West Agricultural Bank Act, 1981(Act 14 of 1981), by changing any reference of bank, to that of Fund.

Clause 35:

Clause 35 provides for the short title of the Act.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

See attached North West Draft Corporate Plan, 2016.

4. FINANCIAL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

See attached North West Draft Corporate Plan, 2016.

5. DEPARTMENTS/ BODIES/ PERSONS CONSULTED

1. Relevant Departmental Components;
2. Provincial Treasury;
3. State Law Advisory Services.

6. CONTACT PERSON:

Name	:	Mr. Thebe Mothusi
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