

KWAZULU-NATAL TOURISM ACT, 1996

(as amended)

To provide for the establishment of bodies to develop, promote and market tourism in KwaZulu-Natal within the framework of government policy, and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Province of KwaZulu-Natal, as follows:-

Definitions

1.) In this Act, unless the context otherwise indicates -

"Authority" means the KwaZulu-Natal Tourism Authority;

"Cabinet" means the Executive Council of the Provincial Legislature of KwaZulu-Natal;

"Department" means that Department whose functions include that of the promotion, development, marketing and regulation of tourism in KwaZulu-Natal;

"KwaZulu-Natal" means the province of KwaZulu-Natal contemplated in Section 103(1)(d) of the Constitution.

"Minister" means the Member of the Executive Council of KwaZulu-Natal whose portfolio includes responsibility for the promotion, development and regulation of tourism within KwaZulu-Natal.

"Minister of Finance" means the Minister of the Executive Council of KwaZulu-Natal whose portfolio includes responsibility for the finances of the government of KwaZulu-Natal'

"organised business" means that body or those bodies which together are representative of a substantial proportion of the commercial and business enterprises in KwaZulu-Natal which are or are likely to be directly or indirectly involved in the development, promotion and marketing of tourism in KwaZulu-Natal;

"organised labour" means that body or those bodies which together are representative of a substantial proportion of the labour force in KwaZulu-Natal which is or is likely to be directly or indirectly involved in the development, promotion and marketing of tourism in KwaZulu-Natal;

"parliament" means the provincial legislature of KwaZulu-Natal;

"portfolio committee" means the Portfolio Committee of Parliament responsible for Tourism'

"prescribed" means prescribed by regulations;

"Secretary" means the Secretary for the Department; and

"Regional Council" means any established Regional Council or Metropolitan Council.

CHAPTER 1 : THE KWAZULU-NATAL TOURISM AUTHORITY

Establishment of the KwaZulu-Natal Tourism Authority

2.) There is hereby established the KwaZulu-Natal Tourism Authority which shall consist of not less than seventeen and not more than thirty members.

The Authority shall be a juristic person.

Powers, duties and functions of the Authority

3.) The Authority shall have the power -

to investigate and make recommendations to the Cabinet, through the Minister, on any matter relating directly or indirectly to the promotion, development or marketing of tourism for KwaZulu-Natal;

to initiate and implement media campaigns intended to promote, develop and market tourism for KwaZulu-Natal as a whole or specific areas or venues within KwaZulu-Natal;

to co-ordinate, advise and guide other bodies, organisations or institutions whose activities or aims could have an impact on the promotion, development or marketing of tourism in KwaZulu-Natal;

to employ or use the services of agents, contractors and consultants;

to employ the services of professional, technical, administrative or other categories of staff on a full-time or part-time basis;

to provide for its staff medical aid, retirement and any other benefits the Authority deems necessary, whether by -

establishing and operating schemes or funds to provide such medical or retirement benefits, as the case may be, or providing the facilities whereby staff have access to such schemes or funds, or a combination of both of these

for the purposes of promoting, developing and marketing tourism for KwaZulu-Natal - with the prior approval of the Minister:

- to establish and operate one or more companies, closed corporations or other similar bodies, and to buy and sell shares in such companies, closed corporations or other such similar bodies;

- to enter into joint ventures with other institutions, organisations, bodies or persons;

to become partners or shareholders in companies, closed corporations or other bodies and to sell all or part of such shares or interests;

- to enter into agreements and contracts with any institution, body, organisation or person anywhere in the world;
- to grant recognition to those tour operators, tour guides, restaurants, hotels, accommodation establishments, resorts, reserves and other similar persons or bodies who meet requirements determined from time to time by the Authority;
- to facilitate the establishment of Regional Tourism Fora;
- to undertake research, obtain advice, raise funds by any means including the acceptance of conditional and unconditional donations and sponsorships;
- to take any other action which is necessary to assist the Authority in carrying out any of the activities contemplated in the above.

Invitation of nominations for members of the Authority

4.) The Minister shall from time to time and using that method or those methods which will in his or her opinion reach the greatest number of residents of KwaZulu-Natal, invite the submission to him or her of the names of persons who could be taken into consideration when appointing members to the Authority.

The invitation shall specify the method of submission and a date by which such nominations are to reach the Minister.

Appointment of chairperson and members of the Authority

5.) The Minister shall from time to time appoint -

a person to be the chairperson of the Authority: Provided that the person so appointed shall not be in the employ of the central or a provincial government;

not less than sixteen persons as members of the Authority: Provided that when making such appointments, the Minister shall maintain the following balance of interests within the Authority -

(i) four persons representing organised business;

(ii) two persons representing organised labour;

(iii) four persons representing the interests of communities which are involved, directly or indirectly, in the hosting of tourists in KwaZulu-Natal;

(iv) one person representing metropolitan local government in KwaZulu-Natal;

(v) two persons representing urban and rural local government bodies in KwaZulu-Natal;

(vi) one person representing the Department;

(vii) one person representing that body or those bodies responsible for the management of State-owned nature conservation areas;

(viii) one person representing that body or those bodies responsible for the preservation and management in KwaZulu-Natal of sites and artifacts of cultural and historical significance;

(ix) one person nominated by the portfolio committee;

(x) one person from each Regional Tourism Committee which is in existence and actively promoting tourism at the time that such appointment is made;

such other persons as the Minister deems fit to appoint in order to redress imbalances in or provide expertise to the Authority;

Provided that the total number of members appointed to the Authority shall not exceed thirty at any one time.

Disqualification of appointment to membership of the Authority

6.) No person shall be appointed as a member of the Authority or if so appointed, shall immediately cease to be a member if he or she-

(a) is or becomes an unrehabilitated insolvent;

(b) is or has been declared by a competent court to be of unsound mind;

(c) since the date on which Act 200 of 1993 came into effect, is or has been convicted of an offence and sentenced to a term of imprisonment greater than twelve months without the option of a fine: Provided that:

(i) any conviction or sentence imposed by a court beyond the borders of the Republic of South Africa shall not be taken into account for the purposes of this paragraph unless such offence would have been an offence if committed within the Republic of South Africa at that time;

(ii) for the purposes of this paragraph, no person shall be deemed to have been convicted and sentenced until -

(1) any appeal noted or lodged against such conviction or sentence has been heard and judgement given on such appeal; or

(2) no appeal against such conviction or sentence was noted or lodged within the time permitted by law for such noting or lodgement.

Appointments may be full-time or part-time

7.) An appointment contemplated in section 5 may, at the discretion of the Minister, be made on a full-time or part-time basis: Provided that:

(a) where the chairperson or a member is appointed on a full-time basis, he or she shall not, without the prior written permission of the Minister, perform or engage himself or herself to perform any remunerative work outside the duties of his or her office.

(b) where the chairperson or a member is appointed on a part-time basis, he or she may perform or engage himself or herself to perform remunerative work outside the duties of his or her office provided that such work does not interfere with, derogate from or result in a conflict of interest with his or her duties as the chairperson or a member.

Period of office

8.) A person contemplated in section 5 shall be appointed to the Authority for a period of three years or such lesser period as the Minister may determine. Different periods of office may be determined for different appointments. On the expiry of such term of office, the person shall be eligible for reappointment.

Chairperson and deputy chairperson

9.) The members of the Authority shall from time to time elect from within their own ranks a person to be the deputy chairperson of the Authority.

In the event of the office of chairperson being vacant or the chairperson is absent, incapacitated or refuses or fails to act as chairperson of the Authority, the deputy chairperson shall be empowered to exercise all of the powers, rights, functions and duties of the chairperson during the period of such vacancy, absence, incapacity, refusal or failure.

In the event of-

(a) the offices of both chairperson and deputy chairperson being vacant, or

(b) both the chairperson and deputy chairperson being absent or incapacitated or refusing or failing to undertake the duties of chairperson,

The members then present shall appoint another of the members to act as chairperson during the period of such vacancy, absence, incapacity, refusal or failure.

Filling of vacancies

10.) In the event of a vacancy in the office of chairperson or in the ranks of the members occurring for any reason, the Minister may, subject to the provisions of section 6, appoint a person or persons to fill such vacancy or vacancies for a period of office determined by the Minister when making such appointment.

Appointments to be made after consultation with the portfolio committee

11.) Any appointment to the Authority, including the filling of vacancies, shall be made by the Minister only after consultation with the portfolio committee.

Publication of appointments

12.) When appointing the chairperson or a member of the Authority, the Minister shall cause a notice to be published in the Provincial Gazette as soon as is practical after such appointment notifying the name of the appointee, the office held, the date of effect and period of such appointment.

Resignation of appointment

13.) A chairperson or a member may at any time and upon giving not less than thirty days written notice to the Minister, resign his or her appointment as the chairperson or member or both.

Termination of appointment

14.) Notwithstanding the provisions of sections 6 and 13, the Minister may, after consultation with the portfolio committee, prior to the date on which a chairperson or member's period of office would otherwise terminate, withdraw such appointment on one or more of the following grounds:-

(a) infirmity of mind or body which prevents him or her from the proper discharge of the duties of his or her office;

(b) conduct which, in the opinion of the Minister, brings or could bring the office of the chairperson or member or the activities of the Authority into disrepute;

(c) failure, refusal or neglect to carry out the duties and functions of the chairperson or a member to the best of his or her ability;

Temporary suspension of a chairperson or member

15.) The Minister may suspend the chairperson or a member from the execution of his or her duties whilst the Minister is investigating and considering allegations which, if proved to be correct or substantially correct, could result in the member's appointment being terminated in terms of section 14.

Remuneration and conditions of appointment

16.) The Minister shall, in consultation with the Minister of Finance, from time to time determine the remuneration, if any, and conditions of appointment of chairpersons and members of the Authority.

Meetings of the Authority

17.)The meetings of the Authority shall be held on such dates and at such times and places as may from time to time be determined by resolution of the Authority: Provided that the first meeting of the Authority shall be held at such time and place as the chairperson may determine: Provided further that the Authority shall meet at least three times in every calendar year;

The quorum for a meeting of the Authority shall be a simple majority of the total number of members appointed at that time.

A decision of the majority of the members present at a meeting of the Authority shall be a decision of the Authority, and in the event of an equality of votes the chairperson shall have a casting vote in addition to a deliberative vote.

The Authority may, in its discretion, allow members of the public to attend any meeting of the Authority.

Establishment of committees

18) The Authority may from time to time establish committees from within the ranks of the members to which specific matters or classes of matters may be referred for investigation and report to the Authority.

When establishing a committee contemplated above, the Authority shall-

determine the terms of reference of such committee including but not limited to whether or not such committee shall cease to exist once it has completed the task or tasks allocated to it by the Authority;

appoint a chairperson of such committee who shall be a member of the Authority;

determine whether or not that committee may co-opt persons who are not members of the Authority, and if so, on what terms and conditions.

The Authority may at any time terminate the existence of any mandate given to a committee, irrespective of whether or not it has completed the task or tasks allocated to such committee by the Authority.

Minutes of proceedings

19.)The Authority shall cause minutes to be compiled of the proceedings of every meeting of the Authority and of any committee established by the Authority and cause copies of such minutes to be circulated to all the members.

The minutes prepared in terms of the above paragraph when signed at a subsequent meeting of the Authority by the chairperson, shall in the absence of proof of error therein be deemed to be a true and correct record of the proceedings which they

purport to minute and shall, at any proceedings in terms of this Act or before a court of law, tribunal or commission of inquiry, constitute prima facie evidence of the proceedings of the Authority and the matters they purport to minute.

Disclosure of conflicting interests

20.) Subject to the provisions of the last paragraph, where, in relation to a matter being investigated, considered or voted upon by the Authority, a member has any interest which precludes or could preclude him or her from performing his or her functions as a member in a fair, unbiased and proper manner, he or she shall not participate in such investigation, consideration or vote and shall absent himself or herself from the room or other venue in which such investigation, consideration or voting is taking place.

If at any stage during the course of any proceedings before the Authority it appears that a member who is present at that meeting has or may have an interest contemplated in subsection the above paragraph, such a member shall forthwith disclose the nature of his or her interest and leave the meeting so as to enable the remaining members to discuss the matter and determine whether such member must comply with subsection the above paragraph.

Any disclosure and determination contemplated in the above paragraphs shall be recorded in the minutes of the meeting in question.

If any member fails to comply with the above as applicable, the relevant proceedings of the Authority shall be null and void *ab initio*.

Reports

21.) The Authority shall, not later than 30 June of each year, submit a report to the Minister on the activities of the Authority for the twelve month period ending on the preceding 31 December, which report shall be tabled in the KwaZulu-Natal Provincial Legislature by the Minister not later than 31 August of each year.

Administrative support to the Authority

22.) On the establishment of the Authority, the Minister shall take whatever steps may be necessary to provide the Authority with such secretarial and administrative support as may be necessary. Any such support shall be withdrawn once the Authority has itself appropriate professional, technical and administrative staff: Provided that such withdrawal may be effected on a phased basis over a period of time.

Funds of the Authority

23.)The activities of the Authority shall be funded by means of-

- (a) funds voted for that purpose by the Provincial Legislature, or
- (b) funds raised by the Authority from sources other than funds controlled by the Provincial Legislature, or
- (c) any other source approved by the Minister in consultation with the Minister of Finance of the KwaZulu-Natal Provincial Legislature, or
- (d) any combination of the sources of funding contemplated in paragraphs (a), (b) or (c).

Annual financial statements

24.)The books of account and other financial records of the Authority shall be audited annually, at the expense of the Authority, by the Auditor-General or by a firm of auditors approved of by the Minister.

When submitting the annual report contemplated in section 21, the Authority shall also submit an Annual Financial Statement, duly audited as contemplated in subsection (1), covering the same period as is covered by that annual report.

CHAPTER 2 : REGIONAL TOURISM FORA

Establishment of Regional Tourism Fora

25.)The Authority may from time to time after consultation with affected Regional Councils determine the boundaries of a regional tourism area. The Authority shall convene a meeting with a view to the establishment of a regional tourism forum and the election of a regional tourism committee in such area subject to voting procedures determined by the Authority so as to accommodate the provisions of subsection (2).

At a meeting contemplated in subsection (1), a Regional Tourism Committee shall be elected consisting of not more than 15 persons resident in and representatives of the interests of that area as determined by the Authority and shall as far as practical consist of -

not less than one person elected by and representing each of -

- (i) organised business;
- (ii) organised labour;
- (iii) the interests of communities which are involved, directly or indirectly, in the hosting of tourists;
- (iv) primary local government bodies;
- (v) the Regional Council or Regional Councils having jurisdiction over the area of that regional tourism committee;
- (vi) that body or those bodies responsible for the management of State-owned nature conservation areas;
- (vii) that body or those bodies responsible for the preservation and management of sites and artifacts of cultural and historical significance;
- (viii) publicity associations; tourism development associations and tourism bureaux;

Representatives of such other groups or interests as may be identified as having a contribution to make to the development, promotion and marketing of tourism in the Region.

The Authority may from time to time appoint a member of the Authority as an *ex officio* member of the regional tourism committee contemplated in subsection 2.

The Secretary of the Department may from time to time appoint an official of the Department as an *ex officio* member of the regional tourism committee contemplated in subsection 2.

Recognition of a regional tourism committee

26.) If the Authority is satisfied that a regional tourism committee contemplated in section 25 is representative of the tourism-related persons, bodies and groupings within the area contemplated in section 25, the Authority may grant recognition to such committee, in which event such committee shall be the formal link between the Authority and the tourism-related activities within such area.

If the Authority is of the opinion that a committee to which recognition has previously been granted is no longer representative of the tourism-related persons, bodies and groupings within the area contemplated in section 25, the Authority may suspend or withdraw such recognition.

Amendment of boundaries of a regional tourism forum area

27.) The Authority may, in consultation with the affected forum or fora, amend the boundaries contemplated in section 25(1).

Office-bearers of regional tourism committees

28.) A regional tourism committee contemplated in section 25(2) shall from within its own ranks elect-

(a) a chairperson and a deputy chairperson

(b) a person to represent such regional tourism committee at meetings of the Authority.

Powers, duties and functions of regional tourism committees

29.) A regional tourism committee shall, as far as is practical, and subject to any directives by or policies of the Authority, co-ordinate the promotion, development and marketing of tourism within the area determined by the Authority.

Membership and internal arrangements of a regional tourism forum

30.) The qualifications for membership of a regional tourism forum, period of office of a member of the regional tourism committee, annual subscriptions for members, the calling of and procedure at general meetings of the members or of the regional tourism committee and other similar internal arrangements and rulings shall be determined by each regional tourism forum for such committee: Provided that membership of the regional tourism forum shall be open to all groups identified in Section 25(2)(a).

Meetings of a regional tourism forum and committee

31.) A regional tourism forum shall meet not less than once in every calendar year. At one such meeting during a calendar year, the regional tourism forum shall, *inter alia* -

(a) receive an annual report and annual financial statement from the regional tourism committee;

(b) elect members to vacancies on the regional tourism committee;

(c) consider amendments, if any, to the determinations contemplated in section 30.

The regional tourism committee of a regional tourism forum shall meet on at least four occasions during a calendar year.

Subject to any determination made in terms of sections 30 or 31(1)(c), the manner of calling any meeting contemplated in subsections (1) and (2), the proceedings at such meetings, the establishment of subcommittees and any related matters shall be as determined from time to time by the regional tourism committee.

The Authority shall, within thirty days of the date on which such meeting was held, be furnished with a copy of the minutes of meetings of a regional tourism forum or regional tourism committee.

Remuneration of members of committees of a regional tourism committee

32.) A member of the regional tourism committee or of a subcommittee established by such regional tourism committee have no claim on the Authority for the payment of any fees or allowances arising from his or her membership of such committee or sub-committee.

Funding of the activities of a regional tourism forum

33.) The activities of a regional tourism forum shall be funded from membership fees and other voluntary contributions made to such forum.

Regulations

34.) The Minister may, from time to time, after consultation with the Portfolio Committee and by notice in the Provincial Gazette, make regulations relating to -

- (a) invitation of nominations for possible appointments to the Authority;
- (b) the use of agents, contractors and consultants;
- (c) the determination and the payment of the fees and allowances payable to the chairperson and members of the Authority;
- (d) the powers, duties and functions of any public servant seconded to the Authority;
- (e) the payment to the Authority of fees and charges arising directly or indirectly from any of the services provided by or recognitions granted by the Authority;
- (f) any matter which is incidental to any of the powers, duties or functions of the Authority or of a regional tourism forum.

Short title and date of commencement

35.) This Act shall be called the KwaZulu-Natal Tourism Act, 1996 and shall come into operation on a date to be determined by the Premier of KwaZulu-Natal by notice in the *Provincial Gazette*.

