

GAUTENG PROVINCIAL LEGISLATURE

GAUTENG PETITIONS AMENDMENT BILL 2024

*(As introduced in the Gauteng Provincial Legislature;
explanatory summary of Bill and prior notice of its
introduction published in Government Gazette No. of
.....)*

(The English text is the official text of the Bill)

(STANDING COMMITTEE ON PETITIONS)

[G—2024]

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

(m) The long title of the Gauteng Petition Act, 2002 (Act No.5 of 2002) (hereinafter referred to as the "*principal Act*"), is hereby amended-

(a) by the insertion of the following:

To amend the Gauteng Petitions Act, 2002; so as to amend and insert certain definitions; to provide the norms and standards for municipalities to align their bylaws and policies on the processing and management of petitions, to provide for the Executive Council accountability and responsiveness with regards to petitions.

WHEREAS Section 17 of the Constitution amongst others, guarantees a person's right to petition; AND WHEREAS Section 115 of the Constitution states that a provincial legislature or any of its committees may receive petitions, representations, or submissions from any interested person; AND WHEREAS Section 116 of the Constitution does not prescribe a process and procedure for when a petition is received by a legislature;

WHEREAS Section 40 recognises that three spheres of government are distinctive, interdependent, and interrelated, not assume any power or function except those conferred on them in terms of the Constitution, exercise their powers and perform their functions in a manner that does not encroach on the geographical function, cooperate with one another in mutual and good faith by-:

1. friendly relations;
2. adhering to agreed procedures; and,
3. establishing or providing for structures and institutions to promote and facilitate intergovernmental relations.

AND DULY RECOGNISING the status, role and function of Chapter 9 Institutions or any other investigative body in terms of any legislation;

Amendment of Section 1 of Act 5 of 2002

1. Section 1 of the Petition Act, 2002 (Act No. 5 of 2002) (hereinafter referred to as the "*principal Act*"), is hereby amended by the deletion of the following in definition of Constitution: "**Constitution**" means the Constitution of the Republic of South Africa, 1996 [Act No. 108 of 1996] by the substitution of the following:
 - (p) "**Secretary**" means the [the person appointed in terms of Section 12(1)(a) of the Gauteng Provincial Legislature Services Act, 1996 (Act No. 5 OF 1996)] Accounting Officer of the Legislature and include any person acting in that position.
 - (q) by insertion of the following definitions:
 - (r) "**Witness**" means a person invited, summoned, or subpoenaed to give a report on the matter before the committee.
 - (s) "**Subpoena**" means the process to invite a person with material evidence.

- (t) “**Authority**” means a provincial department, municipal council, or other government institution that has jurisdiction over the matter raised.

Amendment of Section 2 of Act 5 of 2002

OBJECTS

By insertion of the following:

2. (1) The objects of this Act are -
- (a) to enact legislation required by Section 17 of the Constitution;
 - (b) to give effect to the letter and spirit of the Constitution;
 - (c) to promote public participation in the province;
 - (d) to conduct the business of the legislature in an open and transparent manner;
 - (e) to develop an implementation of effective accountability to the legislature’s constituency;
 - (f) to accelerate the culture of participatory democracy;
 - (g) to establish voluntary and mandatory mechanisms and procedure to give; and
 - (h) effect to the right of petition in a manner which enables persons to obtain a fair hearing as simple and affordable as possible.

INSERTION OF NEW CLAUSE

INTERPRETATION

Any person applying this Act must interpret its provisions so as to give effect to -

Section 17 of the Constitution, which includes the promotion of petition through legislative and other measures designed to protect or advance persons disadvantaged by past and present unfair discrimination.

b) the relevant Standing Rules of the Gauteng Provincial Legislature.

(2). Any person interpreting this Act must take into account any relevant law or code of practice in terms of a law and the context of public participation and the purpose of this Act.

AMENDMENT OF SECTION 3 OF ACT 5 OF 2002

3. General Principles

Section 3 of the principal Act is hereby amended by deletion of the following:

[(1) A petitioner may submit a petition in any of the official languages of the Republic of South Africa.

(2) The committee must-

(a) respect, protect and promote the rights of a petitioner provided for in this Act;

(b) take appropriate steps to promote and facilitate participation by the citizens of the province in the process of government of the province; particularly person disadvantaged by unfair discrimination of whatever nature; and

(c) enhance democracy by exercising maximum accountability and transparency in the consideration of petition.

(3) The Speaker must promote and facilitate a fair and equitable process of considering petition submitted to the legislature in terms of this Act.]

Section 3 of the principal Act is hereby amended by substitution of (3) with (1);

By insertion of word “public” after the word facilitation;

by deletion of “participation by the citizens of the province”;

by insertion of “considering petitions”;

by deletion of “government of the province”;

by deletion of “maximum”;

(1) The Speaker must promote and facilitate a fair and equitable process of considering petition submitted to the legislature in terms of this Act.

(2) The committee must-

(a) respect, protect and promote the rights of a petitioner provided for in this Act;

(b) take appropriate steps to promote and facilitate public participation **[by the citizens of the province]** in the process of considering petitions, government of the province; particularly persons disadvantaged by unfair discrimination of whatever nature; and

(c) enhance democracy by exercising **[maximum]** accountability and transparency in the consideration of petition.

(3) A petitioner may submit a petition in any of the official languages of the Republic of South Africa.

AMENDMENT OF SECTION 4 OF ACT 5 OF 2002

4: Petition

by deletion of the following:

(4)(d) a **[mass or]** group petition, which is made up of individual or group submissions from a number of petitioners, concerning the same or substantially similar complaints or requests.

by insertion of the following:

5. Submission of a petition

by insertion of the following:

5(4) A petitioner must first exhaust internal remedies before approaching the legislature.

AMENDMENT OF SECTION 6 OF ACT 5 OF 2002

6. FUNCTIONS OF A COMMITTEE

by insertion and deletion of the following:

6.(d) With regard to Member of the Executive Council and **[municipal]** Speaker of Council should be separated.

(e) require the person or body to whom that petition was referred to furnish the Committee within **[four weeks]** 30 working days of that referral in writing with a detailed report on the steps taken by that person or body to address the complaint, request, recommendation, or instruction by the committee, as the case may be, and the reasons for those particular steps;

(f) if more time is needed to make a decision-

(i) a Member of the Executive Council or the Speaker of the Municipal Council must inform the committee through the Speaker's office of

(ii) the reasons why more time is needed; and

(ii) the date by which they expect to finalise the matter; which date may not be later than fourteen days working days after the date on which the period prescribed in Subsection 6(e) expires; and

(iii) must make its decision on or before that date.

AMENDMENT OF SECTION 12 OF ACT 5 OF 2002

12: Accountability of the committee

1. by deletion of the following in Section 12(1) after the Section 6(1)(f) **[and (g)]**:
2. by deletion of the following:

[(5) The legislature may, whilst the committee is considering a petition, only conduct an interpellation in respect of that petition relating to the process of considering the petition and not in respect of the merits thereof.]

12 (a) Accountability to by the committee. -

By insertion of the following under Section 12(4)

(1) The committee must prepare a report at least quarterly on every petition it has adjudicated upon for submission to the legislature for consideration.

(2) The committee must prepare and submit an annual written report of its activities to the legislature.

(3) The annual written report of the committee must provide for an evaluation of the responsiveness, efficiency and time of which petitions referred to under Section 8(2) was resolved.

12(b) Accountability by the Executive Authority

(1) The Executive Authority must:

- (a) ensure that they respond to the petitions with the time given by the committee;
- (b) attend to the committee hearings upon invitation by the committee.
- (c) ensure attendance of the delegated senior officials to the committee hearings on petitions relevant to their department.
- (d) report quarterly and provide an account on how they processed all the petitions referred to their department; and
- (e) report annually and provide an account on how they processed all the petitions referred to their department.

AMENDMENT OF SECTION 13 OF ACT 5 OF 2002

The following Section is hereby substituted for Section 13 of the principal Act:

by substitution of [**and material of evidence**] clause 13, with before the committee

13(5) by insertion of the following after word choice at their own cost

14. Application of Act to municipalities within the province

- (1) This Act applies, with the necessary changes required by context, to municipalities within the province.
- (2) In such application, a reference in the Act to—
 - (a) a provincial organ of State, must be construed as a reference to—

(i) a municipal entity as defined in Section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and

(ii) a municipality as described in Section 2(a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and

(b) the responsible Member, must be construed as a reference to the Executive Mayor or Mayor of the municipality concerned.

Gauteng Province standard bylaws

AMENDMENT OF SECTION 14 OF ACT 5 OF 2002

A deletion and insertion of the following:

(1) Within a year from the date of commencement of this Act, a municipality must—

(a) pass bylaws that substantially conform to the matters provided for in **[Schedule 1;]** this Act

(b) in the event the bylaws already exist, revise and if necessary, amend the bylaws to make them substantially conform to the matters provided for in **[Schedule 1;]** this Act or

(c) on good cause shown, request the responsible Member and local government to grant one extension, for a maximum of three months, to comply with paragraphs (a) or (b) of Subsection (1).

(2) The provisions of Sections 12 and 13 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), apply in respect of the passing of bylaws by a municipality in terms of Subsection (1).

(3) To assist municipalities to comply with the provisions of Subsection (1), the Member of the Executive Council responsible for local government matters in the province must, after consultation with the responsible Member, publish, by notice in the *Provincial Gazette*, and within one month of the commencement of this Act, model standard bylaws on provincial petitions that complies with this Act.

(4) A municipality may opt to adopt the standard bylaws contemplated in the Subsection.

(3) as the bylaws contemplated in Subsection (1)(a).

SHORT TITLE AND COMMENCEMENT

This Act is called the Gauteng Petitions Amendment Act, 2024.

Memorandum on the Objective of the Gauteng Petitions Amendment Bill 2024

Submitted in terms of Section 119 of the Constitution read with Gauteng Legislature Standing Rule 196(2).

1. Background

3. Purpose of the Bill

The *Gauteng Petitions Amendment Bill 2024* seeks to amend the Gauteng Petitions Act 2002, so as to amend and insert certain definitions; to provide for the right to submit a petition to the legislature of the Province of Gauteng; to provide for the norms and standards for municipalities to align their petitions policies with the amended Gauteng Petitions Bill, to encourage the people of Gauteng to exhaust all remedial measures before escalating to the Legislature.

4. Contents of the Bill

Clause 1

This is the definition clauses. There were some definitions that were not catered for in the principal Act. Also, to provide more clarity on some of the definitions used in relation to the scope of the Bill.

Clause 2

This clause provides for the purpose of the Bill namely: to enact legislation required by Section 17 of the Constitution, regarding the submission and processing of petitions in the Gauteng Provincial Legislature.

(b) to give effect to the letter and spirit of the Constitution and the Standing Rules of the Gauteng Provincial Legislature;

(c) to promote public participation in the province;

(d) to conduct the business of the legislature in an open and transparent manner;

(e) to develop an implementation of effective accountability to the legislature's constituency;

(f) to accelerate the culture of participatory democracy;

(h) to establish voluntary and mandatory mechanisms and procedure to give effect to the right of petition in a manner which enables persons to obtain a fair hearing as simple and affordable as possible.

2(b) INTERPRETATION CLAUSE

This clause deals with the interpretation of the Act. It provides for the scope of the Act and the spirit and letter of the constitution. It contextualises the manner in which the Act must be interpreted.

Clause 3

The clause provides for the promotion and facilitation of public participation in line with the Constitution and enhancement of democracy.

Clause 4

This clause provides for the process of submission of a petition. The clause was amended with a deletion of the word mass, to avoid ambiguity. Now the subclause only make reference to a group petition.

Clause 5

This clause provides for the process that need to be followed before seeking the intervention of the legislature. Also, to ensure that petitioners exhaust internal remedies prior to submission of the petition to the legislature.

Clause 6

This clause provides for the process that need to be taken by the committee in processing a petition. Requires a detailed report from a body or person to whom a petition was submitted to provide a committee with the steps taken in addressing the complaint.

AMENDMENT OF SECTION 12 OF ACT 5 OF 2002

12: Accountability of the Executive Council and committee

This cause provides for reporting by the committee to the legislature. This clause was amended to ensure responsiveness of the Executive Council in the province, which includes that the responses of the petitions are responded on time, and to ensure that there is proper delegation to all committee meetings of the legislature.

The four week's period for responding to petitions, was amended to ensure alignment with the programme of the legislature.

AMENDMENT OF SECTION 13 OF ACT 5 OF 2002

This clause provides for the procedure during oral evidence. This clause was amended to clarify the kind of evidence required during a hearing, taking into account the legislature's oversight role over the Executive Council.

AMENDMENT OF SECTION 19 OF ACT 5 OF 2002

This clause provides for the short title and commencement of the Act. This clause was amended to indicate a year in which the Bill will be adopted.

FINANCIAL IMPLICATIONS

There will be no financial implications, however the legislature will need to review support capacity to the committee.

SOCIOECONOMIC IMPLICATION

There will be no socioeconomic implications.

CONSTITUTIONALITY OF THE BILL

The Bill is within the scope of the Constitution; hence the processing of the petition is regulated by the Constitution.