

# GAUTENG PROVINCIAL LAWS GENERAL AMENDMENT BILL, 2020

Gauteng Provincial Legislature  
Oversight Committee on Premier's Office and Legislature  
03 November 2022



**GAUTENG**  
PROVINCIAL GOVERNMENT  
REPUBLIC OF SOUTH AFRICA

**GGT2030**  
GROWING GAUTENG TOGETHER



## Content of Presentation

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## Purpose of Bill

- Rationalise appointment of board members and hiring of chief executive officers of provincial public entities.
- Consideration and approval by EXCO of all appointments of board members and CEOs of provincial public entities.
- Enhanced standards of governance and accountability, with Executive Council taking collective responsibility for following:
  - ✓ Appointment of members to governing boards.
  - ✓ Termination of membership of governing boards.
  - ✓ Appointment of chief executive officers.
  - ✓ Termination of appointment of chief executive officers.

## Purpose of Bill (Cont. ...)

- Improved financial planning and accountability due to requirement of concurrence of Finance MEC in relation to:
  - ✓ Determination of remuneration and allowances payable to members of governing bodies.
  - ✓ Determination of terms and conditions of employment of staff of public entities.
- Enhanced accountability, with EXCO taking collective responsibility for appointment of administrator to exercise powers and perform functions of public entities.

## Legislative and Policy Framework

- Constitution of the Republic of South Africa, 1996.
- Companies Act, 2008 (Act No. 71 of 2008).
- Enabling Acts or Legislation.
- King IV Report on Corporate Governance for South Africa, 2016
- Executive Council's Resolution of 14 March 2018.
- Guidelines for Appointment of Persons to Boards and CEOs of State-  
**Owned** and State-**Controlled** Institutions (March 2019).

## Enabling Legislation to be Amended

- Gauteng Gambling Act 4 of 1995).
- Consumer Affairs (Unfair Business Practices) Act 7 of 1996.
- Gauteng Tourism Act 10 of 2001.
- Gauteng Growth and Development Agency (Pty) Ltd Act 5 of 2003.
- Gauteng Enterprise Propeller Act 5 of 2005.
- Gautrain Management Agency Act 5 of 2006.
- Gauteng Liquor Act 3 of 2014.



## Content of Bill

- ❑ The Bill provides for proposed rationalisation in following respects:
  - ✓ Substituting the words “**Executive Council**” for the words “**responsible Member**”, “**MEC**”, or “**responsible Member in concurrence with the Standing Committee on Finance and Economic Affairs**” in respect of appointment or termination of membership of governing bodies.
  - ✓ Omitting the words “**after consultation with the Standing Committee of the Provincial Legislature responsible for economic affairs**” in respect of suspension or termination of membership of any member of a governing body.
  - ✓ This includes appointment or termination of position of Chairperson and Deputy Chairperson.



## Content of Bill (Cont. ...)

- ✓ Substituting the words “in consultation with the Member of the Executive Council responsible for finance” for the words “after consultation with the Standing Committee of the Provincial Legislature” in relation to determination of remuneration and allowances payable to members of governing bodies.
- ✓ Substituting the words “in consultation with the responsible Member acting in concurrence with the Member of the Executive Council responsible for finance” for the words “with the concurrence of the responsible Member” in relation to determination of terms and conditions of employment, including remuneration, allowances and other employment benefits, of staff by governing bodies.



## Content of Bill (Cont. ...)

- ✓ Substituting the words “in consultation with” for the words “after consultation with” thus making it compulsory for responsible Member to obtain approval of EXCO instead of merely consulting EXCO when appointing administrator to perform functions or to exercise powers of governing body.
- ✓ Removing requirement for the “concurrence of the Standing Committee of the Provincial Legislature responsible for financial matters” for the words “with the concurrence of the responsible Member” whenever responsible Member is to make regulations in terms of enabling or principal Act or Legislation.

## Content of Bill (Cont. ...)

- ✓ Substituting the words “**Executive Council**” for the words “**responsible Member**” or “**MEC**” in relation to appointment of person to position of chief executive officer, thus making the appointment subject to the approval of Executive Council instead of responsible Member or MEC.

## Matrix of Proposed Amendments per Subject

Subject	Nature of Amendment	Enabling Legislation
<p><b>Appointment of members of governing bodies</b></p>	<p>Appointments of members of boards by the Executive Council (previously “responsible Member”, “MEC” or “responsible Member in concurrence with the Standing Committee on Finance and Economic Affairs”)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> s5 of Gauteng Gambling Act, 1995</li> <li><input type="checkbox"/> s14(1) of Consumer Affairs (Unfair Business Practices) Act, 1996</li> <li><input type="checkbox"/> s5 read with s5A of Gauteng Tourism Act, 2001</li> <li><input type="checkbox"/> s8(2) of Gauteng Growth and Development Agency (Proprietary) Limited Act, 2003</li> <li><input type="checkbox"/> s7(1) read with s10 of Gauteng Enterprise Propeller Act, 2005</li> <li><input type="checkbox"/> s10 of Gautrain Management Agency Act, 2006</li> <li><input type="checkbox"/> s2 and 3 of Gauteng Liquor Act, 2014</li> </ul>

## Matrix of Proposed Amendments per Subject (Cont. ...)

Subject	Nature of Amendment	Enabling Legislation
Termination of membership of governing bodies	Terminations of membership of boards by the Executive Council (previously “responsible Member”, “MEC” or “responsible Member in concurrence with the Standing Committee on Finance and Economic Affairs”)	<ul style="list-style-type: none"> <li><input type="checkbox"/> s18B(7) of Gauteng Gambling Act, 1995</li> <li><input type="checkbox"/> s13 of Gauteng Tourism Act, 2001</li> <li><input type="checkbox"/> s9 of Gauteng Enterprise Propeller Act, 2005</li> <li><input type="checkbox"/> s12 of Gautrain Management Agency Act, 2006</li> <li><input type="checkbox"/> s8 of Gauteng Liquor Act, 2014</li> </ul>

## Matrix of Proposed Amendments per Subject (Cont. ...)

Subject	Nature of Amendment	Enabling Legislation
<b>Suspension of membership of any member of a governing body</b>	Omission of the consultation with “the Standing Committee of the Provincial Legislature responsible for economic affairs” in relation to the suspension of the membership of a member of a governing body	<input type="checkbox"/> s8 of Gauteng Gambling Act, 1995
<b>Determination of the remuneration and allowances payable to members of governing bodies</b>	Determination of the remuneration and allowances payable to members of governing bodies, to be in consultation with, or with the concurrence of, the Member of the Executive Council for Finance	<input type="checkbox"/> s10 of Gauteng Gambling Act, 1995 <input type="checkbox"/> s14(8) of Consumer Affairs (Unfair Business Practices) Act, 1996 <input type="checkbox"/> s5D of Gauteng Tourism Act, 2001 <input type="checkbox"/> section 10(4) of Gauteng Enterprise Propeller Act, 2005 <input type="checkbox"/> s7(3) of Gauteng Liquor Act, 2014

## Matrix of Proposed Amendments per Subject (Cont. ...)

Subject	Nature of Amendment	Enabling Legislation
<p><b>Determination of the terms and conditions of employment, including remuneration, allowances and other employment benefits, of the staff of public entities by governing bodies</b></p>	<p>Determination of the terms and conditions of employment (including remuneration, allowances and other employment benefits) of the staff of public entities to be in consultation with, or with the concurrence of, the Member of the Executive Council for Finance</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> s12(3) of Gauteng Gambling Act, 1995</li> <li><input type="checkbox"/> s11(2)(b) of Gauteng Tourism Act, 2001</li> <li><input type="checkbox"/> s24 of Gauteng Enterprise Propeller Act, 2005</li> <li><input type="checkbox"/> s29 of Gautrain Management Agency Act, 2006</li> </ul>

## Matrix Proposed Amendments Per Subject (Cont. ...)

Subject	Nature of Amendment	Enabling Legislation
<p><b>Appointing an administrator to perform the functions or exercise the powers of the governing body</b></p>	<p>Appointment of an administrator to perform the functions and powers of the governing body after consultation with the Executive Council, i.e. requiring the approval of the Executive Council as opposed to the mere consultation</p>	<p><input type="checkbox"/> s18C(7) of Gauteng Gambling Act, 1995</p>
<p><b>Making regulations in terms of an enabling or principal Act</b></p>	<p>Removal of the requirement for the concurrence of the Standing Committee of the Provincial Legislature responsible for financial matters whenever the responsible Member of the Executive Council intends making regulations in terms of an enabling or principal Act</p>	<p><input type="checkbox"/> s84 of Gauteng Gambling Act, 1995 <input type="checkbox"/> s29 of Consumer Affairs (Unfair Business Practices) Act, 1996</p>

## Matrix of Proposed Amendments per Subject (Cont. ...)

Subject	Nature of Amendment	Enabling Legislation
Appointment of a chief executive officer	Approval of the Executive Council is required for the appointment of a chief executive officer rather than the responsible Member of the Executive Council	<input type="checkbox"/> s12(1)(a) of Gauteng Gambling Act, 1995 <input type="checkbox"/> s5(2) read with section 6(1) of Gauteng Tourism Act, 2001 <input type="checkbox"/> s20(1) of Gauteng Enterprise Propeller Act, 2005
Suspension of chief executive officer	Responsible Member may suspend the chief executive officer rather than terminate their employment	<input type="checkbox"/> s12A of Gambling Act, 1995
Termination of appointment of chief executive officer	Termination of the appointment of a chief executive officer by the Executive Council	<input type="checkbox"/> s6(6) of Gauteng Tourism Act, 2001 <input type="checkbox"/> s22(3) of Gauteng Enterprise Propeller Act, 2005



## Consultation Process

- Preliminary consultations with key departments/bodies. Done
- Submission of policy proposal to EXCO. Done
- Submission of draft Bill to EXCO Done
- Submission of draft Bill to Minister. Done
- External Stakeholder Consultations. Done
- Preliminary certification by State Law Advisor. Done
- Socio Economic Impact Assessment (Final). N/A
- EXCO approval for publication for public consultation. Done
- Publication of Bill in the Provincial *Gazette*. Done
- Introduction of Bill into Provincial Legislature. Done

## Conclusion

- Enhanced standards of governance and accountability, with Executive Council taking collective responsibility for following:
  - ✓ Appointment of members to governing boards.
  - ✓ Termination of membership of governing boards.
  - ✓ Appointment of chief executive officers.
  - ✓ Termination of appointment of chief executive officers.



## Conclusion

***“The legislative power is the heart of the state;  
the executive is the brain which sets all parts in motion.  
The brain may become paralysed and the individual still alive ... but  
as soon as the heart stops functioning, a creature is dead.”***

**Jean-Jacques Rousseau “The Social Contract” (1762)**

## Contact Details

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