





GAUTENG PROVINCIAL LEGISLATURE SERVICE REPEAL BILL, 2025

(As proposed to by the Standing Committee on Rules) (the English text is the official text of the Bill)

(Standing Committee on Rules)

BILL

The Bill seeks to provide for the repeal of the Gauteng Provincial Legislature Service Act, 5 of 1996; and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of Gauteng, as follows:-

Repeal of Act 5 of 1996

1. The Gauteng Provincial Legislature Service Act, 1996 (Act No. 5 of 1996), is hereby repealed.

Transitional Arrangements

2.(1) The functions and powers of the Legislature Service Board envisaged in Section 8(1) of the repealed Gauteng Provincial Legislature Service Act, 1996 (Act No. 5 of 1996), shall be exercised by the Executive Authority as contemplated in Section 5 of the Financial Management of Parliament and Provincial Legislatures Act, 10 of 2009 (As Amended). The exercise of such powers by the Executive Authority shall be pursuant to Section 4 of the Financial Management of Parliament and Provincial Legislatures Act, 10 of 2009 (As Amended).











Short title

3. This Act is called the Gauteng Provincial Legislature Service Repeal Act, 2025.



EXPLANATORY MEMORANDUM – GAUTENG PROVINCIAL LEGISLATURE SERVICE REPEAL BILL, 2025

I. <u>INTRODUCTION</u>

1.1. The Gauteng Provincial Legislature seeks to introduce and pass the Gauteng Provincial Legislature Service Repeal Bill, 2025. This Bill seeks to repeal the Gauteng Provincial Legislature Service Act, 1996 (Act No. 5 of 1996), and provides for transitional arrangements and matters connected thereto.

II. <u>BACKGROUND</u>

2.1. The competency to enact legislation concerning the financial management, administration and planning framework for provinces in South Africa falls within the purview of national legislation. This is evident from the Constitutional Court Judgement In Premier: Limpopo Province v Speaker: Limpopo Provincial Legislature and Others¹. In said judgement the Constitutional Court inter alia declared the Gauteng Provincial Legislature Financial Management Act 7 of 2009 to be inconsistent with the Constitution and therefore invalid.² This was the Act which enabled the Gauteng Provincial Legislature to amongst others regulate its own financial management and administrative matters. The aforementioned judgement outlined that the legislative competence of provincial legislatures unlike that of national Parliament which has plenary powers, is limited to what is contained in Schedule 4 and 5 of the Constitution as well as where the Constitution expressly contemplates the enactment of provincial legislation or where national Parliament assigns such powers to a provincial legislature.

¹ [2012] ZACC 3; 2012 (4) SA 58 (CC); 2012 (6) BCLR 583 (CC). (Premier: Limpopo II)

² At paragraph 17 the Constitutional Court held that—

[&]quot;In view of the parties' attitude, we need not say much on the issue. It is pellucid that the statutes before us, barring the North West Act, are all substantially similar to the Limpopo Bill in regard to their declared purpose and structure. They are worded in almost identical terms and they all seek to regulate the financial management of the provincial legislatures. They all represent adaptations of the generic Bill developed by the Speakers' Forum. Therefore, it suffices to state that, for the same reasons cited in Limpopo I, we find these statutes to be unconstitutional."

- 2.2. The national legislation alluded to above is the Financial Management of Parliament and Provincial Legislatures Act, 10 of 2009 (As Amended).
- 2.3. In essence, it encapsulates the statutory framework regulating the financial management, administration and planning framework for Parliament and Provincial Legislatures.
- 2.4. In 1996 the Gauteng Legislature passed the Gauteng Provincial Legislature Service Act, 1996 which was enacted just before the Constitution of RSA, 1996. This Act sought, amongst other things, to provide for the establishment of a Service of the Legislature, the establishment of the Legislature Service Board, the organization and administration of the Service, the determination of the Budget of the Service, and matters incidental thereto.
- 2.5. There has however, been some misgivings on the constitutionality of this Act. Firstly, as indicated above, the Act predated the Constitution of RSA of 1996 and was pursuant to the Interim Constitution of 1993. Thus, the enactment of the said Act, although with noble intentions, fell outside the legislative competence of the Legislature. This was out of kilter with both the Constitution, 1996 and the Financial Management of Parliament and Provincial Legislatures Act, 10 of 2009 (As Amended).
- 2.6. Secondly, most of the provisions of the Act are out of sync with the Constitution and national legislative framework as outlined above, the salient provisions are those purporting to establish the legislature, its service and the Legislature Service Board which are all not consistent with the Constitution and amongst others the Financial Management of Parliament and Provincial Legislatures Act, 10 of 2009 (As Amended) in amongst others that the Legislature Service Board is accorded Executive Authority functions while being chaired by the Speaker who in terms of the Constitution and national legislative framework is the Executive Authority. The Act also has provisions dealing with for instance the Provincial Tender Board which purportedly deals with procurement and

- supply chain management matters which provisions are obsolete in *lieu* of the national legislative framework.
- 2.7. Ultimately, the Act is rendered unconstitutional and its continued operation is unsustainable.
- 2.8. It is therefore against this background that the Gauteng Provincial Legislature seeks to repeal the Gauteng Provincial Legislature Service Act, 1996 through the introduction of this particular Repeal Bill.

III. CLAUSE BY CLAUSE DISCUSSION

Clause 1

3.1. This clause seeks to provide for the repeal of the Gauteng Provincial Legislature Service Act, 1996 (Act No. 5 of 1996).

Clause 2

3.1. This clause provides for transitional arrangements.

Clause 3

3.4. Clause 3 contains the short title. It merely states that this Act is called the Gauteng Provincial Legislature Service Repeal Act, 2025.

IV. FINANCIAL IMPLICATIONS

The Repeal Bill has no financial implications.

V. <u>STAKEHOLDER IMPLICATIONS</u>

5.1. The following stakeholders were consulted and engaged: All political parties represented in the GPL through the Rules Committee, the independent members of the Legislature Service Board and its subcommittees. It is envisaged that said stakeholder engagements will continued during the consideration of the Repeal Bill.