

GAUTENG PROVINCIAL LEGISLATURE

GAUTENG ENTERPRISE PROPELLER AMENDMENT BILL, 2026

*(As introduced in the Gauteng Provincial Legislature as a Government Bill in terms of Rule 192(1) of the
Standing Rules of the Gauteng Provincial Legislature)
(The English text is the official text of the Bill)*

(Member of the Executive Council responsible for economic development in the Province)

[B—2026]

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 provide for the amendment of the Gauteng Enterprise Propeller Act, 2005 (Act No. 5 of 2005), so as to validate acts taken and decisions made by the MEC, the Board or the Chief Executive Officer, as the case may be, at any time during the period from 26 January 2006 up to and including the date of the commencement of the Gauteng Enterprise Propeller Amendment Act, 2026; and to provide for matters connected therewith or incidental thereto.

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

Insertion of section 37A into Act 5 of 2005:

1. The following section is hereby inserted into the Gauteng Enterprise Propeller Act, 2005 (Act No. 5 of 2005) (hereinafter referred to as the “Act”), after section 37:

2. **“Acts taken or decisions made by MEC, Board or Chief Executive Officer**

3. 37A. (1) This section applies if, at any time during the period from 26 January 2006 up to and including the date of commencement of the Gauteng Enterprise Propeller Amendment Act, 2026—
4. (a) a person (the “member of the Board”) was appointed in terms of sections 7, 10, 12 or 13;
 5. (b) the appointment referred to in paragraph (a) was terminated in terms of section 9;
 6. (c) a person (the “Chief Executive Officer”) was appointed in terms of sections 20;
 7. (d) the appointment referred to in paragraph (c) was terminated in terms of section 22;
 8. (e) a person (the “employee”) was appointed or seconded in terms of section 24(1);
 9. (f) a person (“persons other than employees”) was contracted in terms of section 24(4);
 10. (g) a guarantee was issued in terms of section 6;
 11. (h) a written directive was given in terms of section 11(2);
 12. (i) a responsibility, function or power was delegated in terms of sections 14 or 25;
 13. (j) funds were deposited in, and transacted or invested from, a bank account in terms of section 28(2) or (3);
 14. (k) a guideline was published in terms of section 32;
 15. (l) regulations were made in terms of section 33;
 16. (m) an institution was designated in terms of section 34;
 17. (n) civil proceedings were instituted, conducted and defended in terms of section 11(3)(a);
 18. (o) any right in or to property was acquired or disposed in terms of section 11(3)(b);
 19. (p) a legal act was performed in terms of section 11(3)(c);
 20. (q) a contract or agreement was approved or entered into in terms of section 11(3)(d), 15(2), 21(1) and (2), 23(2)(a) or 24(4);
 21. (r) a decision was taken in terms of section 17(7) and (8);
 22. (s) a meeting was conducted in terms of section 18; and
 23. (t) a resolution was adopted in terms of section 19.
 24. (2) It is deemed that if subsection (1)(a) to (t) applies—
 25. (a) the MEC’s act of—
 26. (i) appointing the members of the Board or the Chief Executive Officer;
 27. (ii) terminating the appointment of a member of the Board or the Chief Executive Officer;
 28. (iii) giving a written directive to the Board
 29. (iv) concluding a written contract of employment for the Chief Executive Officer;
 30. (v) issuing a guarantee;
 31. (vi) publishing guidelines for organs of state in provincial and local spheres of government to promote small enterprise development;
 32. (vii) making regulations that were necessary or expedient to prescribe for the proper implementation or administration of the Act; and
 33. (viii) designating and incorporating institutions whose objectives and functions are similar to those of GEP into GEP;
 34. (b) the Board’s act of—
 35. (i) instituting, conducting and defending civil proceedings in any matter relating to its functions;
 36. (ii) acquiring or disposing of any right in or to property, specifically immovable property with the consent of the MEC;
 37. (iii) performing legal acts;

- 38. (iv) approving the entering into contracts with any financial institution or any institution relating to financial support;
- 39. (v) concluding a performance agreement for the Chief Executive Officer;
- 40. (vi) delegating the Board's responsibility to any member or committee of the Board or the Chief Executive Officer
- 41. (vii) concluding a written contract to obtain expert assistance of a person with appropriate expertise to assist the Board in performing its functions;
- 42. (viii) taking a decision by a majority of its members;
- 43. (ix) adopting a resolution without a meeting in accordance with a procedure previously established by the Board;
- 44. (x) approving or taking any action in opening and operating a bank account, including the investment of the funds therein;
- 45. (c) the Chief Executive Officer's act of—
 - 46. (i) concluding a written contract of employment with the MEC;
 - 47. (ii) concluding a performance agreement with the Board;
 - 48. (iii) running the GEP on a day-to-day basis and accounting to the Board;
 - 49. (iv) doing all that was or is necessary or expedient to carry out his or her responsibilities in terms of this Act, including but not limited to entering into contracts;
 - 50. (v) appointing personnel with appropriate expertise to assist GEP in carrying out its functions;
 - 51. (vi) contracting for the services of persons, other than employees, to perform any specific act or function;
 - 52. (vii) delegating any responsibility or duty conferred or imposed upon the Chief Executive Officer by this Act or delegated to the Chief Executive Officer by the Board to any other person with appropriate knowledge and experience who was or is under the control of the Chief Executive Officer or any other person, after consultation with the Board,
- 53. is effective for all intents and purposes as far as such act or decision was or could have been validly taken or made if this Act was in operation on 26 January 2006."

Substitution of section 38 of Act 5 of 2005:

54. The following section is hereby substituted for section 38 of the Act:

"Short title and commencement

38. This Act is called the Gauteng Enterprise Propeller Act, 2005[, and comes into operation on a date fixed by the Premier by proclamation in the Provincial *Gazette*]."

Short title and commencement

55. This Act is called the Gauteng Enterprise Propeller Amendment Act, 2026.

EXPLANATORY MEMORANDUM OF OBJECTS ON THE GAUTENG ENTERPRISE PROPELLER AMENDMENT BILL, 2026

1. INTRODUCTION

The Gauteng Provincial Government has always identified the SMME sector as a critical vehicle in respect of direct poverty reduction and for contributing to the transformation of the economic sector, specifically the marginalised. As a result, partnerships with stakeholders for the support of SMMEs in the Province developed, leading to the need to establish an agency to serve as a vehicle to provide financial and non-financial support to SMMEs. To that effect, a Steering Committee was appointed to investigate the feasibility as well as the mechanism thereof.

On the basis of a report of the Steering Committee, the Gauteng Enterprise Propeller (the “GEP”) was established, incorporated and registered as a “not-for-profit” company or an “association incorporated not for gain” with the Companies and Intellectual Properties Office (“CIPRO”), the precursor to the Companies and Intellectual Property Commission (“CIPC”), in terms of section 21 of the original Companies Act, 1973 (Act No. 61 of 1973) (a “section 21 company”). It was classified as a company limited by guarantee, which was deemed to be a public company for the purposes of that Act in terms of section 17(3).

Subsequent the enactment of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (the “PFMA”), a legislative framework was required for the establishment of the GEP and for bringing the GEP into the mainstream of the legislative framework and to ensure certainty and alignment with the PFMA. The Gauteng Enterprise Propeller Bill, 2005, created that framework by providing for the establishment, responsibilities and functions of the GEP, as published under General Notice 4056 of 2005 in Provincial *Gazette* Extraordinary No. 455 of 27 October 2005.

The Gauteng Enterprise Propeller Act, 2005 (Act No. 5 of 2005) (the “Act”), following its enactment by the Gauteng Provincial Legislature, was assented to and signed by the Premier on 19 January 2006 pursuant to section 121 of the Constitution of the Republic of South Africa, 1996 (the “Constitution”). The Act, in accordance with section 123 of the Constitution, was promptly published for “general information” under General Notice No. 2 of 2006 in Provincial *Gazette* Extraordinary No. 22 of 26 January 2006. Section 123 of the Constitution provides that—

“A Bill assented to and signed by the Premier of a province becomes a provincial Act, must be published promptly and takes effect when published or on a date determined in terms of that Act.”
[Emphasis added]

Section 123 of the Constitution, in essence, is comprised of three parts. The first part deals with when a Bill which is adopted by a provincial legislature transmogrifies into a provincial Act, i.e., when assented to and signed by the Premier.

The second part flows from the first and is couched in peremptory language that mandates the Premier, or any other functionary specified in the provincial Act, to without delay, publish the provincial Act as assented to and signed by the Premier, for general information. As pointed out by the Constitutional Court in *President of the Republic of South Africa v Hugo* 1997 (4) SA (1) CC, the obligation imposed on the Premier flows from the concept of the rule of law so that—

“A person should know the law and be able to conform his or her conduct to the law”.

Put differently, the legal principle underpinning the obligation is that the law should be communicated and made known to the persons to whom it applies so as to allow them the opportunity to fashion their affairs accordingly moving forward.

The third part (as underlined) of section 123 of the Constitution specifically regulates two possibilities as when a provincial Act that is adopted by a provincial legislature, on the one hand, and assented to and signed into a provincial Act by the Premier, on the other hand, comes into operation. The first is on the publication of the provincial Act in the Provincial *Gazette*, depending on the wording of the provision of the Act that deals with the short title merely providing for the name of the Act and leaving the commencement provision out of the Act. The second possibility is on the date determined or fixed by the Premier in the Provincial *Gazette*. This is further provided for in section 13(1) of the Interpretation Act, 1957 (Act No. 33 of 1957), that provides that “*unless some other day is fixed by or under the law for the coming into operation thereof, the day when the law was first published in the Gazette*” is the day that the law came into operation.

The two possibilities are not mutually inclusive, but rather exclusive, and the Provincial Legislature in section 38 of the Act originally chose the latter route, i.e. “on the date determined by the Premier in the Provincial *Gazette*.” It is now proposed that this be amended to the former route, i.e., on the date that the Act was first published in the Provincial *Gazette*, being 26 January 2006.

2. BACKGROUND

The Act establishes the GEP as a provincial public entity. As such, the GEP had to be deregistered as a section 21 company from the CIPRO before or on the commencement of the Act and had to be classified and listed as provincial public entity in terms of the PFMA. The GEP was accordingly deregistered as a section 21 company and classified and listed the GEP as a provincial public entity in Part C of Schedule 3 to the PFMA by the Minister of Finance, under General Notice 1001 of 2008 published in Government *Gazette* No. 3147 of 19 September 2008.

26 January 2006 had since been taken as the date on which the Act came into operation, being the date of the initial publication of the Act for general information. A diligent search through various records and other means, including digital platforms, for the proclamation of any other date as the date of commencement of the Act by the GEP, the Department of Economic Development (the “Department”) and the Office of the Premier did not produce any positive outcomes.

Bearing in mind that section 38 of the Act required that the commencement date of the Act had to be published by proclamation by the Premier in the Provincial Gazette, the Department then sought legal advice from the State Law Advisory Services in the Office of the Premier for the best and appropriate route of addressing the *lacuna*. Following thorough deliberations and engagements, the advice was rendered to err on the side of caution by drafting validation legislation in the form of the Gauteng Enterprise Propeller Amendment Bill and tabling of same to the Provincial Legislature for enactment into a provincial Act.

The Gauteng Enterprise Propeller Amendment Bill, 2026 (the “Bill”), has been drafted by the Department in collaboration with the State Law Advisory Services in the Office of the Premier.

3. OBJECTS OF THE BILL

The sole object of the Bill, in erring on the side of caution, is to provide for the validation of acts taken

and decisions made by the MEC, Board or the Chief Executive Officer of the GEP, as the case may be, in terms of the existing framework of the Act at any time during the period from 26 January 2006 up to and including the date of the commencement of the Gauteng Enterprise Propeller Amendment Act, 2026, as well as for matters connected therewith or incidental thereto. This is as a result of the lack of an instrument that serves as proof of the commencement date for the Act.

4. JOB CREATION IMPLICATIONS

While the proposed amendments may not directly create jobs, the aim is to reaffirm the validity of acts taken and decisions made for and on behalf of the GEP and provide for assurance to those who interact with the GEP in their business dealings. This, in turn, has a ripple effect on the growth of the economy and the creation of jobs in the Province.

5. ORGANISATION AND PERSONNEL IMPLICATIONS

The implementation of the Bill will be in conjunction with the implementation of the Act by optimising existing resources and capabilities, while seeking additional capacity as needed to effectively implement the provisions of the Act.

6. FINANCIAL IMPLICATIONS

The implementation of the Act is the focus of the GEP's budget for the 2026/27 financial year. Given the provisions of the Bill, its implementation is an integral part of the implementation of the Act.

7. COMMUNICATION IMPLICATIONS

The provisions of the Bill, once adopted and assented to, will be part of a communication plan for the Act by the Department, for the 2026/27 financial year.

8. CONSULTATION WITH OTHER BODIES / DEPARTMENTS / AGENCIES

There have been stakeholder engagements and consultations on the Bill with the GEP, Gauteng Provincial Treasury and the Office of the Premier. In addition, the communication plan referred to above includes further engagements and consultations with other relevant stakeholders as well as undertaking an extensive public participation process.

9. CONSTITUTIONAL AND LEGAL IMPLICATIONS

The purpose of the enactment is to engender compliance with the provisions of section 123 of the Constitution and to create legal certainty in accordance with the principle of legality, which is part of the rule of law, as well as to avoid any possible doubt in the future.

10. SUMMARY OF THE BILL

Clause 1 of the Bill provides for the insertion of Section 37A into the Act to validate a broad spectrum of actions taken and decisions made for and on behalf of the GEP. The validation applies retroactively from

26 January 2006 up to the date that this Bill becomes a provincial Act and comes into operation upon its publication in the Provincial *Gazette*.

The actions taken or decisions made that are being validated, include the following:

- the appointment and termination of members of the Board;
- the appointment and termination of the Chief Executive Officer;
- the appointment and secondment of employees;
- contracting of individuals for specific roles or services;
- the issuance of written directives by the MEC;
- the issuing of guarantees;
- the giving of directives;
- the publication of guidelines to promote small enterprise development and actions related to legal and regulatory matters;
- instituting, conducting and defending civil proceedings;
- the deposit of funds into a bank account, and transacting or investing those funds;
- the designation of institutions;
- acquiring or disposing of property rights;
- performing legal acts;
- approving and entering into contracts or agreements;
- delegation of responsibilities, functions or duties; and
- making decisions and adopting resolutions.

Clause 2 provides for the substitution of section 38 of Act in order to provide for the commencement of the Act to have been on 26 January 2006, the date when the Act was published following its assent. This is in terms of section 123 of the Constitution as well as section 13(1) of the Interpretation Act, 1957.

Clause 3 provides for the short title of the Act, once the Bill is adopted by the Gauteng Provincial Legislature and is assented to and signed by the Premier into a provincial Act.