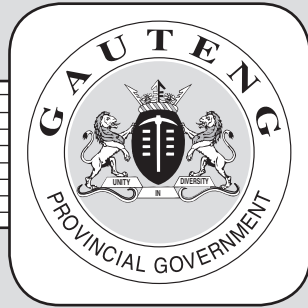


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PREMIER'S NOTICES • PREMIERSKENNISGEWINGS

PREMIER'S NOTICE 3 OF 2018**GAUTENG PROVINCIAL GOVERNMENT****OFFICE OF THE PREMIER****GAUTENG PROVINCIAL LAWS GENERAL AMENDMENT BILL, 2018****PUBLICATION FOR WRITTEN COMMENTS**

The Gauteng Provincial Laws General Amendment Bill, 2018 (the "Bill"), is hereby published for public comments. Interested parties or persons are hereby requested to submit written comments in connection with the Bill within 30 days from the date of publication of this notice in the Provincial *Gazette*.

Written comments must be delivered or posted to the Director General: Gauteng Office of the Premier for the attention of Adv. Monwabisi Nguqu at—

The Director General
Gauteng Office of the Premier
30 Simmonds Street
Marshalltown
Johannesburg
2107
Attention: Adv. Monwabisi Nguqu

Or alternatively email to:

Email: Monwabisi.Nguqu@gauteng.gov.za

Telephone: (011) 355 6312

GAUTENG PROVINCIAL LEGISLATURE

GAUTENG PROVINCIAL LAWS
GENERAL AMENDMENT BILL, 2018

(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, Version 5 – Revision 8)

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

(Premier)

[B—2018]

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 strengthen good governance over the control of the affairs of certain provincial public entities in compliance with the democratic principles and values enshrined in the Constitution of the Republic of South Africa, 1996, and to that effect, to amend—

- the Gauteng Gambling Act, 1995;
- the Consumer Affairs (Unfair Business Practices) Act, 1996
- the Gauteng Tourism Act, 2001;
- the Gauteng Growth and Development Agency (Proprietary) Limited Act, 2003;
- the Gauteng Enterprise Propeller Act, 2005;
- the Gautrain Management Agency Act, 2006; and
- the Gauteng Liquor Act, 2014,

so as to make the appointment or reappointment of members of governing bodies and chief executive officers of those entities the responsibility of the Executive Council, as the collective; and to provide for matters connected therewith or incidental thereto.

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

Amendment of section 5 of Act 4 of 1995

1. Section 5 of the Gauteng Gambling Act, 1995 (Act No. 4 of 1995) (hereinafter referred to as the "principal Act"), is hereby amended—

(a) by the substitution in subsection (1) of the words preceding paragraph (a) of the following words:

"The board shall consist of between eight and 12 members who shall be fit and proper persons, appointed by the **[responsible Member]** Executive Council, and of whom—";

(b) by the deletion in subsection (2) of paragraph (c);

(c) by the substitution of subsection (3) of the following subsection:

"(3) The **[responsible Member]** Executive Council shall appoint a member of the board as the chairperson, and another member as the deputy chairperson, of the board. "; and

(d) by the deletion of subsection (6).

Amendment of section 6 of Act 4 of 1995

2. Section 6 of the principal Act is hereby amended by the substitution for paragraph (k) of the following paragraph:

"(k) is a member of the family of a person contemplated in paragraph (b), (c), (d), (e) or (f) if, in the opinion of the **[responsible Member in concurrence with the Standing Committee on Finance and Economic Affairs]** Executive Council, such family relationship may give rise to real or perceived conflict of interest; or".

Amendment of section 8 of Act 4 of 1995

3. Section 8 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The responsible Member may, after giving the board member concerned an opportunity to be heard **[and after consultation with the Standing Committee of the Provincial Legislature responsible for economic affairs, terminate]**, suspend the membership of any member of the board if good reasons exist for doing so.".

Substitution of section 10 of Act 4 of 1995

4. The following section is hereby substituted for section 10 of the principal Act:

"A member of the board shall be paid such remuneration and allowances out of the funds of the board as the responsible Member may **[determine after consultation with the Standing Committee of the Provincial Legislature responsible for**

financial matters], in concurrence with the Member of the Executive Council responsible for finance, determine."

Amendment of section 12 of Act 4 of 1995

5. Section 12 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) a chief executive officer appointed by the board subject to the approval of his or her appointment by the **[responsible Member] Executive Council**"; and

(b) by the substitution of subsection (3) of the following subsection:

"(3) The staff of the board who are not in full-time service of the State shall receive such remuneration, allowances, and other employment benefits out of the funds of the board, and shall be appointed on such terms and conditions and for such periods, as the board **[, with the concurrence of the responsible Member,]** may, in consultation with the responsible Member and in concurrence with the Member of the Executive Council responsible for finance, determine."

Amendment of section 12A of Act 4 of 1995

6. Section 12A of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection:

"(8) The responsible Member may at any time, after giving the **[Chief Executive Officer] chief executive officer** an opportunity to be heard, **[terminate] suspend** the employment of the chief executive officer if **[,]** good reasons exist for doing so."

Amendment of section 14 of Act 4 of 1995

7. Section 14 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

"(2) A member of a committee contemplated in subsection (2) or (3) who is not a member of the board or in the full-time service of the State shall receive such remuneration and allowances from the funds of the board as the board **[, after consultation with the responsible Member,]** may, in consultation with the responsible Member and in concurrence with the Member of the Executive Council responsible for finance, determine."

Amendment of section 18B of Act 4 of 1995

8. Section 18B of the principal Act is hereby amended by the substitution for subsection (7) of the following subsection:

"(7) The **[responsible Member]** Executive Council may at any time terminate the term of office of any member of the **[Board]** board or the entire **[Board]** board if, in the **[responsible Member's]** opinion of the Executive Council, there are good reasons for doing so."

Amendment of section 18C of Act 4 of 1995

9. Section 18C of the principal Act is hereby amendment by the subsection in subsection (1) for the words preceding paragraph (a) of the following words:

"(7) The responsible Member may, **[after]** in consultation with the Executive Council, by notice in the *Provincial Gazette*, appoint an administrator to perform the functions and exercise the powers of the board, either in whole or in part, excluding the granting and revocation of licences, if the responsible Member is of the opinion that—".

Amendment of section 84 of Act 4 of 1995

10. Section 84 of the principal Act is hereby amended by the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words:

"[with the concurrence of the Standing Committee of the Provincial Legislature responsible for financial matters,] make regulations prescribing—".

Amendment of section 1 of Act 7 of 1996

11. Section 1 of the Consumer Affairs Act, 1996 (Act No. 7 of 1996) (hereinafter referred to as the "principal Act"), is hereby amended by the deletion of the definition of "committee".

Amendment of section 14 of Act 7 of 1996

12. Section 14 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) Members of the court shall be appointed by the responsible Member in concurrence with the **[committee]** Executive Council."; and

(b) by the substitution for subsection (8) of the following subsection:

"(8) A member and alternate member of the court shall be appointed for such period and paid such remuneration and allowances as the responsible Member in concurrence with the Member of the Executive Council responsible for finance may determine, and different remuneration and allowances may be determined in respect of different members and alternate members."

Amendment of section 29 of Act 7 of 1996

13. Section 29 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The responsible Member shall, **[with the concurrence of a committee of the Provincial Legislature with responsibility for consumer affairs and]** after consultation with the chairperson of the court, make regulations relating to—".

Amendment of section 5 of Act 10 of 2001

14. Section 5 of the Gauteng Tourism Act, 2001 (Act No. 10 of 2001) (hereinafter referred to as the "principal Act"), is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph"

"(a) a Board appointed by the **[MEC] Executive Council** in terms of this Act; and"; and

(b) by the substitution for subsection (2) of the following subsection:

"(2) The Board appoints the Chief Executive Officer, subject to approval of his or her appointment by the **[MEC] Executive Council**".

Amendment of section 5A of Act 10 of 2001

15. Section 5A of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The **[MEC] Executive Council** must constitute and appoint a Board of not less than seven (7) and not more than ten (10) members including:";

(b) by the substitution for subsection (2) of the following subsection:

"(2) Prior to **[appointing]** the appointment of the members of the Board, the MEC must publish a notice in the *Provincial Gazette* and advertisements in the media inviting nominations.";

(c) by the substitution in subsection (3) for the words preceding paragraph (a) of the

following words:

"The [MEC] Executive Council must ensure that the members of the Board—";
and

(d) by the substitution for subsection (4) of the following subsection:

"(4) The [MEC] Executive Council must appoint one member of the Board as chairperson and any other member as deputy chairperson, who will act as chairperson of the Board when the chairperson is absent or is unable to perform his or her duties."

Amendment of section 5C of Act 10 of 2001

16. Section 13 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The [MEC] Executive Council may at any time terminate the term of office of any member of the Board or the entire Board if, in the [MEC's] opinion of the Executive Council, there are good reasons for doing so."

Amendment of section 5D of Act 10 of 2001

17. Section 5D of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The conditions of appointment of members of the Board, who are not in the employ of an organ of state, are determined by the MEC in concurrence with the Member of the Executive Council responsible for finance."

Amendment of section 6 of Act 10 of 2001

18. Section 6 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Board [,] must appoint a suitably qualified person as the Chief Executive Officer, subject to approval of his or her appointment by the [MEC] Executive Council."; and

(b) by the substitution for subsection (6) of the following subsection:

"(6) The [MEC] Executive Council may at any time, after consultation with the Board, terminate the employment of the [CEO] Chief Executive Officer if in [his or her] opinion of the Executive Council there are sufficient reasons for doing so after giving the Chief Executive Officer an opportunity to be heard."

Amendment of section 11 of Act 10 of 2001

19. Section 11 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

"(b) be appointed on such terms and conditions of service and for such periods, as the Board may, **[with the concurrence of the MEC]** in consultation with the MEC and in concurrence with the Member of the Executive Council responsible for finance, determine."

Amendment of section 8 of Act 5 of 2003

20. Section 8 of the Gauteng Growth and Development Agency (Proprietary) Limited Act, 2003 (Act No. 5 of 2003), is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:

"(2) The **[MEC]** Executive Council must appoint the Board of Directors consisting of a minimum of 9 (nine) and maximum of 12 (twelve) members.

(3) The **[MEC]** Executive Council must appoint the Chairperson of the Board and the Chief Executive Officer of the Company."

Amendment of section 7 of Act 5 of 2005

21. Section 7 of the Gauteng Enterprise Propeller Act, 2005 (Act No. 5 of 2005) (hereinafter referred to as the "principal Act"), is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) (a) The **[MEC]** Executive Council must constitute the Board; and

(b) **[Appoint]** appoint no less than four and no more than twelve members of the Board.

"(2) Before **[appointing]** the appointment of the members of the Board, the MEC must invite, through the media and by notice in the *Provincial Gazette*, nominations of candidates for appointment.";

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"The **[MEC]** Executive Council must ensure that the Board—";

(c) by the substitution for subsection (4) of the following subsection:

"(4) The [MEC] Executive Council may determine any other criteria or procedure for appointing members.";

(d) by the substitution in subsection (7) of the words preceding paragraph (a) of the following words:

"The [MEC] Executive Council must designate—"; and

(e) by the deletion of subsection (8).

Amendment of section 9 of Act 5 of 2005

22. Section 9 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The [MEC,] Executive Council may terminate the appointment of a board member—"; and

(b) by the substitution for subsection (2) of the following subsection:

"(2) If the performance of the Board has been unsatisfactory or ineffective, the [MEC] Executive Council may, after giving the Board an opportunity to be heard, dissolve the Board."

Amendment of section 10 of Act 5 of 2005

23. Section 10 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) If a member's appointment is terminated or a member resigns, the [MEC] Executive Council may appoint a person to fill the vacancy for the unexpired portion of the period for which the member was appointed, or for such a period as the [MEC] Executive Council may determine subject to the provisions of subsection (3)."; and

(b) by the substitution for subsection (4) of the following subsection:

"(4) The MEC must, in concurrence with the Member of the Executive Council responsible for finance, determine the remuneration and allowances of members of the Board."

Amendment of section 20 of Act 5 of 2005

24. Section 20 of the principal Act is hereby amended by the substitution for subsection

(1) of the following subsection:

"(1) The [MEC] Executive Council, after consulting the Board, must appoint a Chief Executive Officer."

Amendment of section 22 of Act 5 of 2005

25. Section 22 of the principal Act is hereby amended by the substitution of subsection (3) of the following subsection:

"(3) The [MEC] Executive Council, after giving the Chief Executive Officer an opportunity to be heard and after consulting the Board, may terminate the appointment of the Chief Executive Officer if, in the opinion of the [MEC] Executive Council, sufficient reasons exist to do so."

Amendment of section 24 of Act 5 of 2005

26. Section 24 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The Board, in consultation with the MEC and in concurrence with the Member of the Executive Council responsible for finance, must determine the remuneration, allowances, benefits, and other terms and conditions of appointment of members of staff."

Amendment of section 33 of Act 5 of 2005

27. Section 33 of the principal Act is hereby amended by the substitution in subsection for paragraph (a) of the following paragraph:

"(a) **[the criteria or procedures for appointing members of the Board and]** any matter related to the functioning of the Board;"

Amendment of section 10 of Act 5 of 2006

28. Section 10 of the Gautrain Management Agency Act, 2006 (Act No. 5 of 2006) (hereinafter referred to as the "principal Act"), is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words;

"The [MEC] Executive Council—";

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"The [MEC] Executive Council must designate—"; and

(c) by the substitution for subsection (3) of the following subsection:

"(3) Before **[appointing]** the appointment of the members, the MEC must invite, through the media and by notice in the *Provincial Gazette*, nominations for appointment."

Amendment of section 12 of Act 5 of 2006

29. Section 12 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The **[MEC]** Executive Council may terminate the appointment of a member—";
and

(b) by the substitution for subsection (2) of the following subsection:

"(2) If the performance of the Board has been unsatisfactory or ineffective, the **[MEC]** Executive Council may, after giving the Board an opportunity to be heard, dissolve the Board."

Amendment of section 13 of Act 5 of 2006

30. Section 13 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) If a member's appointment is terminated or a member resigns, the **[MEC]** Executive Council may appoint a person to fill the vacancy for the unexpired portion of the period for which the member was appointed or for such a period as the **[MEC]** Executive Council may determine subject to the provisions of subsection (3)."

Amendment of section 23 of Act 5 of 2006

31. Section 23 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The **[MEC]** Executive Council, after consulting the Board, must appoint a Chief Executive Officer."; and

(b) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

"(b) on such terms and conditions as the MEC, after consulting the Board and in concurrence with the MEC for Provincial Treasury, may determine."

Amendment of section 25 of Act 5 of 2006

32. Section 25 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The [MEC] Executive Council, after giving the Chief Executive Officer an opportunity to be heard and after consulting the Board, may terminate the appointment of the Chief Executive Officer if, in the opinion of the [MEC] Executive Council, sufficient reasons exist to do so."

Amendment of section 29 of Act 5 of 2006

33. Section 29 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The Board, in consultation with the MEC and in concurrence with the MEC for Provincial Treasury, must determine the remuneration, allowances, benefits, and other terms and conditions of appointment of members of staff."

Amendment of section 2 of Act 3 of 2014

34. Section 2 of the Gauteng Liquor Act, 2014 (Act No. 3 of 2014) (hereinafter referred to as the "principal Act"), is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"The [MEC] Executive Council must constitute the Board, comprising [of] not less than eight and not more than 15 members, appointed as follows—";

(b) by the substitution for subsections (3) and (4) of the following subsections, respectively:

"(3) Before [appointing] the appointment of the members of the Board, the MEC must invite, through the media and by notice in the Provincial [Gazette] Gazette, nominations of candidates for appointment.

(4) A member of the Board shall be appointed by the [responsible MEC after consultation with the Portfolio Committee of the Provincial legislature responsible for economic affairs whose deliberations shall be open to the public] Executive Council."

(c) by the deletion of subsection (6);

(d) by the substitution for subsection (7) of the following subsection:

"(7) The [MEC] Executive Council must ensure that the Board represents a broad section of the population of the Province, with special attention to race, gender, socio-economic background and disability."; and

- (e) by the substitution in subsection (10) for the words preceding paragraph (a) of the following words:

"The [MEC] Executive Council must designate—".

Amendment of section 3 of Act 3 of 2014

35. Section 3 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"The [MEC] Executive Council must constitute an Appeal Board comprising [of] not less than seven and not more than 10 members, appointed as follows—";

- (b) by the substitution for subsection (3) of the following subsection:

"(3) Before [appointing] the appointment of the members of the Appeal Board, the MEC must invite, through the media and by notice in the Provincial [Gazette] Gazette, nominations of candidates for appointment.";

- (c) by the deletion of subsection (5); and

- (d) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

"The [MEC] Executive Council must designate—".

Amendment of section 7 of Act 3 of 2014

- 36.** Section 7 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The MEC must, in concurrence with the MEC for Finance, determine the remuneration and allowances of members of the Board or Appeal Board [after consultation with the MEC for Finance in the Province]."

Amendment of section 8 of Act 3 of 2014

37. Section 8 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The [MEC] Executive Council may terminate the appointment of a member—";
and

(b) by the substitution for subsections (2), (3), (4) and (5) of the following subsections, respectively:

"(2) If the performance of the Board or Appeal Board is unsatisfactory or ineffective, the [MEC] Executive Council may, after giving the Board or Appeal Board an opportunity to be heard, remove all of the members of the Board or Appeal Board.

(3) If a member's appointment is terminated or a member resigns, the [MEC] Executive Council may appoint a person to fill the vacancy for the unexpired portion of the period for which the member was appointed or for such a period as the [MEC] Executive Council may determine.

(4) The [MEC] Executive Council must in filling the vacancy among others consider the shortlist of nominated candidates referred to in section 2(4) or 3(4).

(5) The [MEC] Executive Council may after following the process contemplated in subsection (2) appoint an interim Board or an interim Appeal Board to take over the functions of the Board or Appeal Board in terms of this Act but the provisions of subsection (3) are not applicable."

Amendment of section 74 of Act 3 of 2014

38. Section 74 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of paragraph (a); and

(b) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

"(f) the requirements for newspapers and Provincial [Gazette] Gazette advertisements in respect of applications;"

Short title and commencement

39. This Act is called the Gauteng Provincial Laws General Amendment Act, 2018.

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