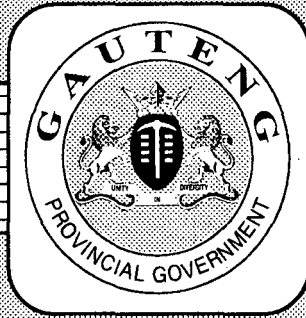


**THE PROVINCE OF
GAUTENG**



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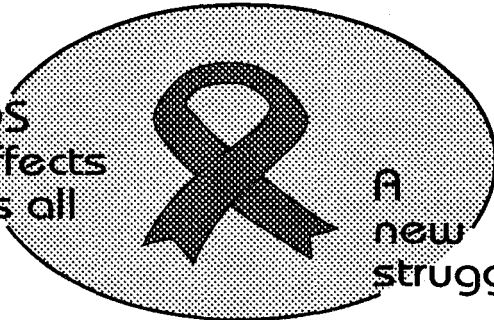
Vol. 9

**PRETORIA, 7 FEBRUARY 2003
FEBRUARIE**

No. 40

We all have the power to prevent AIDS

AIDS
affects
us all



A
new
struggle

Prevention is the cure

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PROCLAMATION

PROCLAMATION

by


THE SPEAKER

No. 2, 2003

**GAUTENG PETITIONS ACT, 2002 (ACT NO. 5 OF 2002)
COMMENCEMENT OF THE ACT**

Under section 19 of the Gauteng Petitions Act, 2002 (Act No. 5 of 2002), I hereby fix **10 February 2003** as the date on which the Act shall come into operation.

Given under my Hand at Johannesburg this 3rd day of February, Two Thousand and Three.



F CACHALIA

The Speaker: Gauteng Legislature

GAUTENG PROVINCIAL LEGISLATURE

GAUTENG PETITIONS ACT, 2002

No 5, 2002

ACT

To provide for the right to submit a petition to the Legislature of the Province of Gauteng; to provide for the general principles and procedures for the submission of a petition to the Legislature; to provide for the consideration of a petition by the Standing Committee of the Legislature assigned to deal with petitions; to provide for the repeal of the Gauteng Petitions Act, 1998, as amended; and to provide for incidental matters.

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

Definitions

1. In this Act, unless the context otherwise indicates —
 - “*administrative support service*” means employees of the Legislature assigned by the Secretary for purposes of the effective implementation and execution of this Act;
 - “*appeal*” means an appeal contemplated in section 9;
 - “*chairperson*” means the chairperson of the Committee;
 - “*Committee*” means a committee of the Legislature assigned by the Speaker to be responsible for the consideration of petitions in terms of this Act, consisting of members of the Legislature as determined from time to time in accordance with the Standing Rules;
 - “*Constitution*” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
 - “*Executive Council*” means the executive council of the Province contemplated in section 132 of the Constitution;
 - “*Legislature*” means the provincial legislature of the Province contemplated in section 104 of the Constitution;
 - “*municipal council*” means the local government authority in the Province;
 - “*petition*” means a complaint or request or a representation or a submission addressed by a petitioner to the Committee in terms of this Act;
 - “*petitioner*” means a person who submits a petition in terms of this Act, and includes a natural or juristic person;
 - “*prescribed*” means prescribed by regulation in terms of section 17;
 - “*Province*” means the province of Gauteng established in terms of section 103 of the Constitution;
 - “*relevant authority*” means a provincial department, municipal council, or other government institution over which the Legislature exercises oversight;
 - “*Secretary*” means the person appointed in terms of section 12(1)(a) of the Gauteng Provincial Legislature Services Act, 1996 (Act No. 5 of 1996);
 - “*Speaker*” means the Speaker of the Legislature elected in terms of section 111 of the Constitution;
 - “*Standing Rules*” means the rules and orders made for the conduct of the business of the Legislature in terms of section 116 of the Constitution;
 - “*this Act*” includes the regulations promulgated under this Act.

Right to petition

2. Any person may submit a petition in terms of this Act.

General principles

3. (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 in the Province, particularly persons disadvantaged by unfair discrimination of whatever nature; and
- (c) enhance democracy by exercising maximum accountability and transparency in their consideration of petitions.

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

Petition

4. (1) A petition may be—

- (a) a single petition, which is an individual submission from a single petitioner, concerning a particular complaint or request;
- (b) an association petition, which is an individual submission from an association or single petitioner mandated by an association to submit that petition, concerning a particular complaint or request;
- (c) a collective petition, which is a collection of signatures from a number of petitioners, concerning a particular complaint or request; or
- (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.

(2) A petition may be submitted by a person acting—

- (a) in his or her own interest;
- (b) in the interest of another person who is not in a position for whatever reason to submit a petition in his, her or its own name;
- (c) as a member of or in the interest of a group or class of persons; or
- (d) in the public interest.

(3) A petition may subject to subsection (4) address any matter—

- (a) within the legislative authority of the Province contemplated in the Constitution;
- (b) within the executive authority of the Province contemplated in the Constitution;
- (c) assigned to a member of the Executive Council in terms of the Constitution; or
- (d) relating to the provincial supervision of local government contemplated in the Constitution.

(4) The Committee must refuse to consider a petition—

- (a) falling outside the scope of matters contemplated in subsection (3);
- (b) concerning a matter pending in a court of law or other tribunal or forum contemplated in the Constitution;
- (c) in connection with the conviction and sentencing by a criminal court of law of a person to a period of imprisonment; or
- (d) addressing a matter, which falls within the scope of a commission of inquiry, established in terms of the Provincial Commissions Act, 1997 (Act No. 1 of 1997).

(5) The Committee may refuse to consider a petition which—

- (a) is illegible;
- (b) does not state the correct name and contact details of the petitioner and, where applicable, the name of the association or group on whose behalf the petition has been submitted;
- (c) has not been signed by the petitioner, except in the case of a petitioner who is unable to write and—
 - (i) who has made a mark on the petition as a symbol of his or her authority to submit the petition; and
 - (ii) that mark was made in the presence of two witnesses who are able to write and who by signing that petition certify that the mark is that of the petitioner;

- (d) addresses a matter previously considered by the Committee except if that petition contains new information that may materially impact on the outcome of the consideration of the matter;
- (e) contains defamatory statements or improper language;
- (f) if applicable, addresses a matter that the petitioner has not yet brought to the attention of the relevant authority, or if the petitioner has brought it to the attention of the relevant authority, the relevant authority has not been afforded reasonable time to consider the matter.

Submission of petition

- 5. (1) A petition must be submitted strictly in accordance with this Act.
- (2) The administrative support service must render all reasonable assistance, excluding financial assistance, to any person who is unable to submit a petition meeting all the requirements imposed by this Act so that that person may properly submit a petition.
- (3) The administrative support service must take all prescribed steps to prepare the petition for consideration by the Committee.

Functions of Committee

- 6. The Committee must—
 - (a) receive every petition submitted in terms of this Act;
 - (b) subject to section 4(3), (4) and (5), consider every petition properly submitted in terms of this Act;
 - (c) record the oral submission or evidence of a petitioner given in terms of section 7(a);
 - (d) if a petition has been referred to a member of the Executive Council or a municipal council in terms of section 7(e)—
 - (i) direct the person or body to whom the petition was referred to consider that petition, make a decision or recommendation in respect of that petition or otherwise dispose of the request or complaint raised in that petition; and
 - (ii) require the person or body to whom that petition was referred to furnish the Committee within four weeks 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;
 - (e) if it refuses to consider a petition in terms of section 4(3), (4) and (5) or because it has not been submitted in accordance with this Act, in writing inform the petitioner of that fact as well as the reasons for its decision;
 - (f) on a quarterly basis report to the Legislature on the petitions submitted to it during that period and all its activities in respect thereof, including:
 - (i) the responsiveness, efficiency and timeousness with which petitions were dealt with; and
 - (ii) the efficacy of the petitions process and procedures; and
 - (g) instruct the administrative support service to inform a petitioner timeously—
 - (i) from time to time, of progress in respect of the consideration of a petition;
 - (ii) of any decision taken by the Committee in respect of a petition, and the reasons for that decision;
 - (iii) if the petitioner has been invited by the Committee to make an oral submission or call a witness;
 - (iv) of the date, time and venue when the petition is to be considered and that the petitioner may attend that sitting of the Committee;
 - (v) of any referral to any person or body contemplated in this Act;
 - (vi) of other remedies available to the petitioner and;
 - (vii) of the fact that the petitioner has access to the petition file at all reasonable times.

Powers of Committee

- 7. The Committee may—

- (a) invite a petitioner to—
 - (i) supplement his or her petition with additional oral or written submissions;
 - (ii) call a witness to present oral or written evidence to the Committee;
- (b) make a recommendation to an appropriate person or body with a view to settling the request or complaint contained in the petition to the satisfaction of the petitioner;
- (c) make a recommendation to an appropriate person or body in respect of the general approach to be followed in future in settling a request or complaint;
- (d) if requested to do so by a petitioner, resolve a dispute or complaint, reverse an act, rectify an omission, regarding matters other than those prescribed by legislation by means of mediation or negotiation;
- (e) refer the petition and recommendation, if any, to a member of the Executive Council or a municipal council for consideration and decision in respect of the complaint or request contained in the petition.
- (f) make a recommendation to the Speaker to refer the petition to—
 - (i) the Legislature;
 - (ii) another committee of the Legislature;
 - (iii) a member of the Executive Council;
 - (iv) a municipal council in the Province;
 - (v) a body supporting constitutional democracy established by Chapter 9 of the Constitution; or
 - (vi) the National Prosecuting Authority;
- (g) conclude its consideration of a petition if it resolves that no steps, or no further steps, as the case may be, can be taken to settle the matter to the satisfaction of the petitioner;
- (h) if a petition has been referred to a member of the Executive Council or a municipal council in terms of section 6(d) and that person or body has failed to comply with section 6(d) or that person or body's conduct or response is unsatisfactory—
 - (i) make a complaint to the Public Protector or the Premier;
 - (ii) take any other appropriate steps that the Committee may lawfully take;
- (i) if the complaint or request in the petition has since its submission been settled to the satisfaction of the petitioner, close the petition file;
- (j) delegate any of its functions or powers in terms of section 10.

Procedure for consideration of petition

8. The procedure for the consideration of a petition is as prescribed in the regulations and in accordance with the Standing Rules.

Right of appeal

- 9. (1) A petitioner may appeal to the Speaker against—
 - (a) a refusal by the Committee to consider a petition;
 - (b) where applicable, a determination by the Chairperson to consider the petition submitted by that petitioner behind closed doors; or
 - (c) any recommendation, referral to another person or body or other decision of the Committee after consideration of the petition submitted by him or her.
- (2) An appeal must be submitted and processed as prescribed.
- (3) The Speaker must consider the appeal as prescribed and may thereafter—
 - (a) dismiss the appeal;
 - (b) table the appeal document and refer it to the Committee for re-consideration; or
 - (c) refer the appeal and the petition file with a recommendation to—
 - (i) the Legislature;
 - (ii) a standing committee of the Legislature;
 - (iii) the Premier or a member of the Executive Council;
 - (iv) the municipal council of a local government;
 - (v) an institution supporting constitutional democracy contemplated in Chapter 9 of the Constitution; or
 - (vi) the National Prosecuting Authority; or

(d) make any other determination, which he or she is competent in law to make in respect of the petition.

(4) The Speaker must within a reasonable time after the consideration of an appeal in writing report to the Legislature on that appeal.

Delegation

10. (1) The Committee may delegate any of its duties, functions or powers in respect of a particular petition to a member of the Committee.

(2) A member contemplated in subsection (1) shall be appointed by the Chairperson.

(3) The Chairperson must provide that member with a written and signed authorization to consider a particular petition.

(4) The Chairperson may at any time before the member has commenced his or her consideration of a particular petition withdraw his or her authorization.

(5) The member must after he or she has concluded his or her consideration of a petition report the outcome of his or her consideration of that petition to the Committee.

(6) Nothing in this section prevents the Committee from exercising any power or performing any duty delegated in terms of this section.

(7) A member appointed in terms of this section has all the powers by implication necessary to enable him or her to fulfil his or her function.

Sitting of Committee

11. (1) The Committee may for purposes of hearing evidence and considering a petition sit at a date and time and at a place in the Province determined by the Chairperson.

(2) The Chairperson must give public notice of a sitting in accordance with the Standing Rules.

(3) The Chairperson must instruct the administrative support service to timely—

- (a) ensure that subpoenas have been properly issued and served as prescribed;
- (b) inform the petitioner in writing of any matter that the petitioner is entitled to be informed of in terms of this Act, any other law or the Standing Rules;
- (c) if necessary, ensure that the contents of a petition file are translated into a working language of the Committee;
- (d) perform any additional duty, which will enable the Committee to properly consider a petition and exercise its other functions in terms of this Act.

(4) Evidence presented before the Committee must be heard in public unless it is—

- (a) in the interests of justice; or
- (b) in the interests of the safety of the petitioner or a witness that, the evidence must be heard behind closed doors.

(5) The administrative support service must provide the Chairperson with a list of submitted petitions, which have not been finalised by the Committee for tabling at each meeting of the Committee.

Accountability of Committee

12. (1) The Committee must report to the Legislature as contemplated in section 6(1)(f) and (g).

(2) A debate on an issue raised in a report of the Committee to the Legislature must take place if more than five members of the Legislature so demand.

(3) The Legislature may refer any matter contained in a report submitted to the Legislature by the Committee back to the Committee for reconsideration.

(4) A member of the Legislature has access to a petition file at any reasonable time.

(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.

(6) A member of the Legislature may whilst the Committee is considering a petition only put a question in respect of that petition relating to the process of considering the petition and not in respect of the merits thereof.

Witnesses and material of evidence

13. (1) For the purpose of ascertaining a matter relating to the subject of its investigation, the committee may—

- (a) summon a person to attend a sitting of the Committee, as a witness, in order to give evidence, produce any book, document, object or other material of evidence if the Committee requires it; or
- (b) subpoena a person to attend a sitting of the Committee, as a witness in order to give evidence, or produce any book, document, object or other material of evidence, before the Committee at a time and place specified in the subpoena.

(2) A subpoena contemplated in subsection (2) must—

- (a) be signed and issued by the Chairperson;
- (b) state the matter in respect of which it is issued;
- (c) stipulate the date, time and venue when the person or a representative of a body must appear before the Committee;
- (d) draw the attention of the person to whom the subpoena is addressed to the provisions of subsection (4); and
- (e) be timeously served on the person to whom the subpoena is addressed by registered mail, by personal delivery or by any other prescribed method.

(3) A person appearing before the Committee to give oral evidence must before giving that evidence take an oath or make an affirmation, administered by the Chairperson or any other person authorised by him or her to do so, to only speak the truth.

(4) Any person other than an employee of the Province or a municipal council appearing before the Committee to give oral evidence or to produce any document, object or other material of evidence under a subpoena issued in terms of this section is entitled to the witness fees payable to a witness giving evidence at a criminal trial in a High Court of the Republic.

(5) A person appearing before the Committee to give oral evidence may be assisted by a representative of their choice.

Retention of materials of evidence

14. (1) The Committee must make a copy or reproduction in any format of materials of evidence submitted to it.

(2) The Committee must retain such copy or reproduction for an indefinite period after conclusion of the consideration of a petition.

(3) The Administrative support service must include the copy or reproduction contemplated in subsection (1) in the particular petition file.

Offences

15. (1) A person properly subpoenaed in terms of section 13 who without sufficient cause—

- (a) fails to appear before the Committee at the date and venue stipulated in the subpoena;
- (b) fails to remain in attendance at the sitting of the Committee until the Chairperson excuses him or her from further attendance;
- (c) refuses or fails to take an oath or make an affirmation contemplated in section 13(3) when called upon by the Chairperson to do so;
- (d) refuses or fails to produce any book, document, object or other material of evidence in his or her possession or under his or her control which he or she has been instructed to produce

is guilty of an offence.

(2) A person properly subpoenaed in terms of section 13 who after having taken an oath or made an affirmation—

- (a) fails to answer fully or truthfully any question lawfully put to him or her; or
- (b) otherwise knowingly gives false evidence

is guilty of an offence.

(3) A person—

- (a) who threatens, obstructs or unduly influences a person properly subpoenaed in terms of section 13 to—
 - (i) refuse or fail to give oral evidence before the Committee;
 - (ii) knowingly give false evidence before the Committee; or

- (iii) refuse or fail to produce any book, document, object or other material of evidence in his or her possession or under his or her control which he or she has been instructed to produce;
 - (b) properly subpoenaed in terms of section 13 who produces any book, document, object or other material of evidence before the Committee, which he or she knows is false, fabricated, falsified or unlawfully or falsely altered;
 - (c) who destroys, conceals, falsifies, fabricates or unlawfully or falsely alters any book, document, object or other material of evidence which he or she knows or may be reasonably expected to know may be relevant to a petition being considered or to be considered by the Committee; or
 - (d) who knowingly furnishes the Committee with information or makes a statement before it which is false or misleading
- is guilty of an offence.

(4) Any person who wilfully obstructs or unduly influences the Committee, any member of the Committee or any member of the administrative support service from doing or not doing anything authorised in terms of this Act is guilty of an offence.

Penalties

16. A person convicted of an offence under section 15 is liable to a fine or to imprisonment for a period not exceeding 12 months or to both such fine and imprisonment.

Regulations

17. (1) The Speaker must make regulations in respect of—

- (a) the process and procedures for the submission of a petition;
- (b) the registration of a petition and opening of a petition file by the administrative support service;
- (c) the preliminary investigation of a petition by the administrative support service;
- (d) the process and procedures for the submission of an appeal by a petitioner;
- (e) the process and procedures for the handling of a petition when the Legislature is not in session; and
- (f) the procedure to deal with conflicts of interest.

(2) The Speaker may make regulations in respect of—

- (a) the rights of a petitioner contemplated in this Act;
- (b) any duty or function not provided for in subsection (1), which the Committee is required to perform;
- (c) any duty or function not provided for in subsection (1), which the administrative support service is required to perform;
- (d) any time frames to be adhered to during any process or for any procedure contemplated in this Act;
- (e) the archiving or disposal of a petition file that has been closed;
- (f) the procedures and process for the issuing and serving of subpoenas for purposes of this Act;
- (g) any measures to be taken by the Legislature, the Committee or the Secretary to promote and facilitate participation by the citizens of the Province in the process of government in the Province; or
- (h) in general, any matter not provided for in this section that may be necessary to prescribe in order to achieve or promote the objects of this Act.

Repeal of Laws

18. The Gauteng Petitions Act, 1998 (Act No. 14 of 1998) and the Gauteng Petitions Amendment Act, 1999 (Act No. 5 of 1999) are repealed.

Short title and commencement

19. This Act is called the Gauteng Petitions Act, 2002, and comes into operation on a date fixed by the Speaker by proclamation in the *Provincial Gazette*.

