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## GENERAL NOTICE

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### NOTICE 5260 OF 2008

## B I L L

**To provide for the scrutiny of subordinate legislation by the Gauteng Provincial Legislature; to provide for the publication and tabling of provincial subordinate legislation and the consequences of non-compliance; to provide for the establishment of a Legislature Committee responsible for scrutiny; to provide for disallowance of provincial subordinate legislation; to provide for publication of an index of subordinate legislation; and to provide for matters connected therewith.**

### PREAMBLE

WHEREAS the Constitution sec 140(3) provides that instruments of subordinate legislation in the Province be accessible to members of the public;

AND WHEREAS the Constitution sec 140(4) invites the Gauteng Provincial Legislature to enact legislation regarding the tabling and approval of subordinate legislation in the Legislature;

AND DESIRING to give effect to the right to just administrative action and to the constitutional principle of legality and rationality;

AND AFFIRMING the framework of Executive Accountability in the Gauteng Province and the place of legislative oversight within that framework;

AND CONSOLIDATING the mechanisms and rules for the scrutiny of subordinate legislation;

AND RECOGNIZING the need to continue to develop the capacity in the Province to make responsive subordinate legislation

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

### **Definitions**

**1.** In this Act, except if not consistent with the context—

**“legislation”** means –

- (a) a specific legislative enactment including this Act but excluding the Constitution; or
- (b) a provision of such a legislative enactment,

whether enacted before or after the commencement of this Act;

**“Legislature”** means the Gauteng Provincial Legislature;

**“provincial legislation”** means a provincial Act, and includes –

- (a) legislation which was in force when the Constitution took effect and which is administered by the Gauteng Provincial Government; and
- (b) subordinate legislation issued after the commencement of this Act by a Gauteng Provincial executive organ of state in terms of a legislative power conferred by –
  - (i) a Gauteng Provincial Act;
  - (ii) legislation referred to in paragraph (a); or
  - (iii) national legislation;

**“subordinate legislation”** means a regulation issued by a Gauteng Provincial executive organ of state in terms of a legislative power conferred on it by national or provincial legislation;

### **Publication and tabling of subordinate legislation as precondition for its enforcement**

2. (1) All subordinate legislation must be published in the Provincial Gazette.

(2) Within 15 days after its publication in accordance with subsection (1), the responsible Member of the Executive Council must table the subordinate legislation in the Legislature.

(3) No subordinate legislation takes effect unless subsections (1) and (2) have been complied with.

### **Legislature to establish a committee for scrutiny**

3. The Legislature must establish a Standing Committee in order to scrutinize the granting of a power to make subordinate legislation and to scrutinize subordinate legislation tabled in accordance with section 2.

### **Scrutiny of subordinate legislation**

4. (1) The committee established in accordance with section 3 must scrutinize tabled subordinate legislation to determine whether it:

- (a) is constitutional and, among other things, does not interfere with the jurisdiction of the courts or infringe rights or the rule of law;

- (b) is authorized by the Act under which it was made;  
and
- (c) does not constitute an unfair use of the power under which it was made.

(2) Where the committee determines that subordinate legislation fails to comply with one or more of the standards of subsection (1), it must report such failing subordinate legislation to the Legislature.

### **Disallowance of subordinate legislation**

**5.** (1) The Legislature may disallow any of the provisions of subordinate legislation reported in terms of section 4.

(2) The Legislature may suspend its disallowance of subordinate legislation in terms of subsection (1) for 30 days or such other definite period as determined by the Legislature in order for the responsible Member of the Executive Council to remedy the subordinate legislation.

(3) Subject to subsection (2), subordinate legislation disallowed by the Legislature is prospectively invalid from the date of disallowance.

### **Publication of index of subordinate legislation**

**6.** (1) The Office of the Premier must compile and maintain an up-to-date and accessible index, with a precise description of the contents of subordinate legislation and proclamations, rules, notices, and determinations published in the *Provincial Gazette*.

(2) The index must be made available regularly by electronic means and published at least annually in the *Provincial Gazette*.

### **Short Title**

**7.** This Act is called the Gauteng Scrutiny of Subordinate Legislation Act, 2008.

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