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GENERAL NOTICE

NOTICE 2223 OF 2011

GAUTENG PROVINCIAL LEGISLATURE

It is hereby notified that the Premier of Gauteng Province has assented to the following Act which is hereby published for general information:-

No. 2 of 2011 : GAUTENG SCRUTINY OF SUBORDINATE LEGISLATION AMENDMENT ACT, 2011.

GAUTENG PROVINCIAL LEGISLATURE

**GAUTENG SCRUTINY OF
SUBORDINATE LEGISLATION
AMENDMENT ACT, 2011**

No 2, 2011

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.

ACT

To amend the Gauteng Scrutiny of Subordinate Legislation Act, 2008, so as to delete a superfluous definition, to insert certain new definitions and to redefine “subordinate legislation”; to do away with the procedure whereby subordinate legislation is scrutinized by the Legislature only after publication of the legislation in the *Provincial Gazette*, and to make provision in stead for the tabling of subordinate legislation in draft form and the scrutiny and approval or disapproval of such draft subordinate legislation by the Legislature through the Standing Committee for the Scrutiny of Subordinate Legislation; to make further provision regarding the publication of an index of subordinate legislation; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 5 of 2008

- 1.** Section 1 of the Gauteng Scrutiny of Subordinate Legislation Act, 2008 (in this Act referred to as the principal Act), is amended— 5
- (a) by the insertion, before the definition of “**legislation**” of the following definitions: 10
- “**Committee**” means the Standing Committee for the Scrutiny of Subordinate Legislation referred to in section 3;
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**Executive Council**” means the Executive Council of the Province of Gauteng contemplated in section 132 of the Constitution;
- “**House**” means the Legislature meeting in plenary;”
- (b) by the substitution for the definition of “**Legislature**” of the following definition: 15
- “**Legislature**” means the Gauteng Provincial Legislature, and includes the Committee;”
- (c) by the insertion, after the definition of “**Legislature**”, of the following definition: 20
- “**provincial functionary**” means—
- (a) a Member of the Executive Council;
- (b) the Speaker of the Legislature;”
- (c) a statutory body established by provincial legislation.
- (d) by the deletion of the definition of “**provincial legislation**”, 25

- (e) by the substitution for the definition of “**subordinate legislation**” of the following definition:
- “ ‘**subordinate legislation**’ means a regulation [**promulgated**] made by a [**Member of the Executive Council**] provincial functionary, after commencement of this Act, in terms of a legislative power conferred on [it] that provincial functionary by—
- 5
- (a) a Gauteng Provincial Act;
- (b) legislation which was in force when the Constitution took effect and which is administered by the Gauteng Provincial Government;
- (c) legislation assigned to a Member of the Executive Council in terms of the Constitution; or
- (d) national [**or provincial**] legislation” and
- (f) by the addition of the following definition:
- “ ‘**working days**’ means Mondays, Tuesdays, Wednesdays, Thursdays and Fridays, excluding public holidays.”.
- 15

Substitution of section 2 of Act 5 of 2008

2. The following section is substituted for section 2 of the principal Act:

“**Tabling of draft subordinate legislation in Legislature**

- (1) Before a provincial functionary makes any subordinate legislation, a draft of the subordinate legislation must be tabled in the Legislature. 20
- (2) Where the provincial functionary concerned is a Member of the Executive Council, the draft subordinate legislation must be accompanied by an appropriate certificate by a State Law Adviser in the Office of the Premier.
- (3) The Speaker must refer the draft subordinate legislation to the Committee for scrutiny. 25
- (4)(a) The responsible provincial functionary may request the Speaker to exempt a particular draft regulation from the operation of this section.
- (b) The Speaker, after consultation with the chairperson of the Committee, may exempt the draft regulation from the operation of this section.”. 30

Substitution of sections 4 and 5 of Act 5 of 2008

3. The following sections are substituted for sections 4 and 5 of the principal Act:

“**Scrutiny of draft subordinate legislation by Committee**

- (1) The Committee must scrutinize tabled draft subordinate legislation to determine whether it— 35
- (a) is consistent with the Constitution;
- (b) is authorized by the Act under which it is to be made;
- (c) complies with any condition set out in that Act; and
- (d) does not constitute an unreasonable exercise of the power under which it is to be made. 40
- (e) raises or spends revenue not authorised by that Act;
- (f) is vague or ambiguous;
- (g) has retrospective effect without express authority by that Act; or
- (h) does not fulfil formal drafting requirements. 45
- (2) The Committee may refer the draft subordinate legislation to another Committee for comment.
- (3) If the Committee is of the view that any provision of the draft subordinate legislation does not comply with any standard set out in subsection (1), it must request the provincial functionary concerned to amend the draft in order to remedy the defect and to submit the amended draft to the Committee. 50
- (4) Where the provincial functionary concerned is a Member of the Executive Council, the amended draft subordinate legislation must be accompanied by an appropriate certificate by a State Law Adviser in the Office of the Premier. 55

- (5) The committee must within 21 working days—
 - (a) from the referral of draft subordinate legislation to it in terms of section 2(3); or
 - (b) where it has requested the provincial functionary to amend the draft subordinate legislation, from the date on which it received the amended draft, decide whether to approve or disapprove the draft subordinate legislation. 5
- (6) If the Committee needs more time to make its decision—
 - (a) the Chairperson of the Committee, after consultation with the Speaker, must inform the responsible provincial functionary of— 10
 - (i) the reasons why more time is needed; and
 - (ii) the date by which the Committee expects to finalize the matter which date may not be later than fourteen working days after the date on which the period prescribed in subsection (5) expires; and
 - (b) the Committee must make its decision on or before that date. 15
- (7) If the Committee fails to take a decision within the period contemplated in subsection (5) or (6), the draft subordinate legislation shall be deemed to have been approved by the Committee.
- (8) The Committee may disapprove draft subordinate legislation only if it finds that the subordinate legislation does not comply with any standard set out in subsection (1). 20
- (9) If the Committee approves draft subordinate legislation, the Chairperson of the Committee must—
 - (a) notify the provincial functionary concerned in writing of the Committee's decision; and 25
 - (b) ensure that a notice of the Committee's decision is published in the official document of the Legislature titled "Announcements, Tablings and Committee Reports".

Consequences of approval or disapproval of draft subordinate legislation 30

- 5. (1) Despite any other law, a provincial functionary may not make any subordinate legislation unless the draft of that subordinate legislation, as it is to be made, has been approved—
 - (a) by the Committee in terms of section 4(9);
 - (b) by the House by virtue of subsection (2) or; 35
 - (c) in terms of section 4(7).
- (2) If the Committee disapproves draft subordinate legislation, the Committee must report the disapproval to the House for consideration and decision."

Amendment of section 6 of Act 5 of 2008 40

4. "(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, proclamations and notices made or issued by a provincial functionary and published in the *Provincial Gazette*."

Substitution of long title of Act 5 of 2008 45

5. The following long title is substituted for the long title of the principal Act:

"ACT

To provide for the scrutiny of draft provincial 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]** approval or disapproval of provincial subordinate legislation by the Legislature through the said Committee; to provide for publication of an index of subordinate legislation; and to provide for matters connected therewith." 50 55

Short title

6. This Act is called the Gauteng Scrutiny of Subordinate Legislation Amendment Act, 2011.