

Gauteng, South Africa

## Gauteng Scrutiny of Subordinate Legislation Act, 2008

Act 5 of 2008

Legislation as at 18 August 2011

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## Gauteng Scrutiny of Subordinate Legislation Act, 2008

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## Gauteng South Africa

# Gauteng Scrutiny of Subordinate Legislation Act, 2008

Act 5 of 2008

*Published in Gauteng Provincial Gazette 32 on 9 February 2009*

**Commenced on 9 February 2009**

*[This is the version of this document from 18 August 2011 and includes any amendments published up to 4 April 2024.]*

*[Amended by [Gauteng Scrutiny of Subordinate Legislation Amendment Act, 2011 \(Act 2 of 2011\)](#) on 18 August 2011]*

## ACT

**To provide for the scrutiny of draft provincial subordinate legislation by the Gauteng Provincial Legislature; to provide for the establishment of a Legislature Committee responsible for scrutiny; to provide for 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.**

*[long title substituted by section 5 of [Act 2 of 2011](#)]*

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 the Gauteng Province, as follows:—

### 1. Definitions

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

**"Committee"** means the Standing Committee for the Scrutiny of Subordinate Legislation referred to in [section 3](#);

*[definition of "Committee" inserted by section 1(a) of [Act 2 of 2011](#)]*

**"Constitution"** means the [Constitution of the Republic of South Africa, 1996](#);

*[definition of "Constitution" inserted by section 1(a) of [Act 2 of 2011](#)]*

**"Executive Council"** means the Executive Council of the Province of Gauteng contemplated in section 132 of the Constitution;

*[definition of "Executive Council" inserted by section 1(a) of [Act 2 of 2011](#)]*

**"House"** means the Legislature meeting in plenary;

*[definition of "House" inserted by section 1(a) of [Act 2 of 2011](#)]*

**"legislation"** means—

- (a) a legislative enactment including this Act; 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, and includes the Committee;

*[definition of "Legislature" substituted by section 1(b) of [Act 2 of 2011](#)]*

**"provincial functionary"** means—

- (a) a Member of the Executive Council;
- (b) the Speaker of the Legislature;
- (c) a statutory body established by provincial legislation.

*[definition of "provincial functionary" inserted by section 1(c) of [Act 2 of 2011](#)]*

*[definition of "provincial legislation" deleted by section 1(d) of [Act 2 of 2011](#)]*

**"subordinate legislation"** means a regulation made by a provincial functionary, after commencement of this Act, in terms of a legislative power conferred on that provincial functionary by—

- (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 legislation

*[definition of "subordinate legislation" substituted by section 1(e) of [Act 2 of 2011](#)]*

**"working days"** means Mondays, Tuesdays, Wednesdays, Thursdays and Fridays, excluding public holidays.

*[definition of "working days" added by section 1(f) of [Act 2 of 2011](#)]*

## 2. 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.
- (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.
- (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.

*[section 2 substituted by section 2 of [Act 2 of 2011](#)]*

### 3. Legislature to establish a committee for scrutiny of Subordinate Legislation

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](#)

### 4. Scrutiny of draft subordinate legislation by Committee

- (1) The Committee must scrutinize tabled draft subordinate legislation to determine whether it—
  - (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.
  - (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.
- (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.
- (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.
- (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.
- (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—
    - (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.
- (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).

- (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
  - (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".

*[section 4 substituted by section 3 of [Act 2 of 2011](#)]*

## **5. Consequences of approval or disapproval of draft subordinate legislation**

- (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;
  - (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.

*[section 5 substituted by section 3 of [Act 2 of 2011](#)]*

## **6. Publication of index of subordinate legislation**

- (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*.

*[subsection (1) amended by section 4 of [Act 2 of 2011](#)]*

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

## **7. Short Title**

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