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PROVINCIAL NOTICE—PROVINSIALE KENNISGEWING—ISAZISO SESIFUNDAZWE

No. 331

31 August 2007

KWAZULU-NATAL LEGISLATURE**KWAZULU-NATAL PETITIONS ACT, 2003 (ACT NO. 4 OF 2003):
CORRECTION NOTICE**

Notice is hereby given that the correct version of the KwaZulu-Natal Petitions Act, 2003 (Act No. 4 of 2003), as enacted by the KwaZulu-Natal Legislature and assented to by the Premier on 5 December 2003, is hereby published.

KWAZULU-NATAL PETITIONS ACT, 2003**(Act No. 4 of 2003)****Assented to on 2003-12-05****ACT**

To provide for the right to submit a petition to the Parliament of KwaZulu-Natal; to establish the procedure to be followed in submitting a petition to Parliament; to provide for the functions of the Private Members' Legislative Proposals, Pensions and Petitions Standing Committee of Parliament; to lay down the general principles and procedure for public participation in the process of government in the Province; and to provide for incidental matters.

BE IT ENACTED by the Parliament of the Province of KwaZulu-Natal as follows:-

1. Definitions

In this Act -

“**Cabinet**” means the Executive Council of the province of KwaZulu-Natal as contemplated in section 132 of the Constitution;

“**Chairperson**” means the chairperson of the Committee;

“Committee” means the Private Members’ Legislative Proposals, Pensions and Petitions Standing Committee of Parliament;

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“Local Government” means the local sphere of government in the Province as contemplated in sections 151 and 155 of the Constitution;

“Member” means a member of the Parliament of KwaZulu-Natal elected to a seat in terms of sections 105 and 106 of the Constitution;

“Parliament” means the Provincial Legislature of KwaZulu-Natal as contemplated in section 104 of the Constitution;

“Petition” means a complaint, request, representation or submission addressed by a petitioner to the Committee, and may take the form of -

- (a) a single petition, which is an individual submission from a single petitioner concerning a particular complaint or request;
- (b) a collective petition, which is a collection of signatures from a number of petitioners concerning a particular complaint or request;
- (c) a group petition, made up of individual or group submissions from a number of petitioners concerning the same or substantially similar complaints or requests; or
- (d) an association petition, which is an individual submission from an association, or an individual mandated by an association, concerning a particular complaint or request;

“Petitioner” means a person who has addressed a petition to the Committee, and includes a natural or juristic person acting -

- (a) in his, her or its own interest;
- (b) in the interest of another person who, or body which, is not in a position to seek relief 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,

and includes an association acting in the interest of its members;

“Province” means the province of KwaZulu-Natal established in terms of section 103 of the Constitution;

“Secretary” means the Secretary of the Provincial Parliament of KwaZulu-Natal;

“Speaker” means the Speaker of Parliament elected in terms of section 111 of the Constitution; and

“Standing Rules” means the standing rules and orders made for the conduct of the business of the KwaZulu-Natal Parliament in terms of section 116 of the Constitution.

2. General principles of the Act

(1) The Committee must -

- (a) subject to subsection (3), take appropriate steps to encourage and facilitate participation by the public, particularly previously politically, socially, and economically excluded communities, in the process of government in the Province, especially the legislative and other processes of Parliament;
- (b) enhance democracy by exercising maximum accountability and transparency;
- (c) receive petitions from a petitioner; and
- (d) respect the rights of petitioners.

(2) A right conferred by this Act must be exercised in a manner which is reasonable and justifiable.

(3) The Committee must take all reasonable steps, within its available resources, to achieve the progressive realization of the rights of public participation as set out under subsection (1).

3. Composition of Committee

The Committee consists of those Members as determined from time to time by the Standing Rules.

4. Right to petition

(1) Subject to the provisions of this Act and any other law, a petitioner has the right to address a petition to the Committee.

(2) A petitioner may only petition Parliament requesting the amendment of provincial legislation under section 7(2)(a) or the reconsideration of a general or administrative decision under section 7(2)(b) where the petitioner has exhausted all other administrative avenues for relief.

(3) A petitioner may petition Parliament requesting any other form of relief envisaged under section 7.

(4) The administrative support service envisaged under section 15 must render assistance to a prospective petitioner who wishes to submit a petition to the Committee, including but not limited to -

- (a) ensuring compliance with the format of the petition under section 6; and
- (b) the correction of a petition under section 16(1)(c)(i).

5. Jurisdiction of Committee

(1) The Speaker, or any person authorised by him or her, must receive a petition.

(2) The Speaker must refer a petition to the Committee in terms of this Act.

(3) The Committee must consider every petition referred to it in terms of this Act.

6. Format of Petition

A petition must be in the format set out in the First Schedule.

7. Content of Petition and Relief Sought

(1) A petitioner must request a form of relief which -

- (a) is constitutional; and
- (b) falls within the provincial legislative competence. This means that the subject matter of the petition must fall within either a Functional Area of Concurrent National and Provincial Legislative Competence under Schedule 4 to the

Constitution or a Functional Area of Exclusive Provincial Legislative Competence under Schedule 5 to the Constitution.

(2) A petitioner may request -

- (a) the amendment of provincial legislation, pending or enacted;
- (b) the reconsideration of a general or administrative decision affecting the petitioner;
- (c) steps to be taken to grant relief to the petitioner; and/or
- (d) any other form of relief deemed by the Speaker, acting in accordance with the approval procedure determined under section 10, to be reasonable.

8. Signing of Petitions

(1) Subject to subsections (2) and (3), a petition must be signed by every petitioner.

(2) The Speaker may waive compliance with subsection (1) where he or she deems waiver necessary and reasonable.

(3) Where a petitioner is unable to sign his or her name, he or she may make a mark on the petition, which mark must be witnessed by two other persons, both of whom must sign as witnesses next to the mark.

9. Language of Petitions

(1) A petition may be lodged in any of the eleven official languages recognized in section 6(1) of the Constitution.

(2) After lodgement, the Speaker must ensure that -

- (a) the petition is translated into English, Afrikaans and isiZulu within two weeks; and
- (b) each translation is certified by a sworn translator to be a true and correct translation of the original petition.

10. Approval by the Speaker or Committee for Tabling

(1) A petition must be deposited for at least one working day with the Speaker, whereafter the Speaker must ensure compliance with section 9(2).

(2) The Speaker must immediately submit the translated petition to the Committee, by providing every member of the Committee with a copy of the petition and any supporting documentation, for consideration and report before it is tabled in the House.

(3) The Speaker or Committee must not approve a petition for tabling in the House -

- (a) requesting relief in conflict with the Constitution;
- (b) requesting relief which Parliament is not competent to grant in accordance with its jurisdiction as set out in section 104(1) of, read with Schedules 4 and 5 to, the Constitution;
- (c) that seeks to review or overturn the proceedings or judgement of a competent court;
- (d) that seeks to intervene in a matter which is *sub judice*;
- (e) originating from a prisoner and connected to his or her case;
- (f) involving a subject matter that is before a commission of inquiry established in terms of the KwaZulu-Natal Commissions Act, 1999 (KZN Act No. 3 of 1999), and other relevant bodies; or
- (g) requesting the amendment of provincial legislation under section 7(2)(a) or the reconsideration of a general or administrative decision under section 7(2)(b) where the petitioner has failed to exhaust all other administrative avenues for relief.

(4) Where approval for the tabling of a petition in the House is refused by the Speaker, the Speaker must refer the matter to the Committee for reconsideration and final decision.

(5) The Committee must provide a report to the Speaker either approving or disapproving of the tabling of the petition in the House, with reasons.

(6) The Speaker must refer a petition not approved for tabling in the House by him or her or the Committee back to the petitioner, together with reasons, and a recommendation, where appropriate, that the petitioner petition the National Assembly.

11. Tabling

(1) Subject to his or her satisfaction that the petition complies with this Act, the Speaker must cause the petition to be tabled in the House as soon as is reasonably practicable after approval for tabling in the House by the Speaker or the Committee.

(2) No debate may take place in the House on the tabling of a petition.

(3) After tabling of a petition, a motion on notice relating to the petition may be moved and debated.

12. Oral Submissions

(1) Subject to subsection (2), a petitioner must submit a petition in writing, written in the petitioner's preferred language, to the Speaker or any person authorised by him or her.

(2) The Committee may allow a petitioner to supplement a written petition with oral submissions.

(3) Before it considers a petition, the Committee must record and reduce to writing oral submissions contemplated in subsection (2).

13. Powers and Functions of the Committee

(1) The Committee must -

- (a) consider a petition that has been tabled with a view to settling the matter; and
- (b) where applicable, advise a petitioner of other appropriate remedies available to him or her.

(2) The Committee may refer the petition to a relevant Portfolio Committee, which must draft a report containing an opinion on the petition for submission to the Committee within four weeks of the referral.

(3) The Committee may invite any appropriate municipal council of a local government in the Province, institution supporting constitutional democracy mentioned in Chapter 9 of the Constitution, organization, union, body or State department to -

(a) consider the petition and submit, within four weeks of the date of the referral, a memorandum containing an opinion and recommendations on the petition; and/or

(b) send a representative to attend a meeting of the Committee to provide additional information.

(4) If the Committee is of the opinion that the conduct of a person or body to whom a petition has been referred in terms of this section is unsatisfactory, and that the circumstances merit this action, the Committee may make a complaint to the Public Protector, or take other appropriate action.

(5) Subject to the provisions of this Act, if requested to do so by a petitioner, the Committee may resolve a dispute, reverse an act or rectify an omission by means of mediation or negotiation.

(6) The Committee may make a recommendation to a person or body on the basis of a petition.

(7) The Committee may conclude its consideration of a petition if it is of the opinion that -

(a) no steps, or no further steps, can be taken to settle the matter; or

(b) the matter has been settled as requested by the petitioner.

(8) The Committee must -

(a) make quarterly reports of referrals as contemplated in subsections (2) and (3) to Parliament; and

(b) report to Parliament on a petition where the Committee has completed its investigations and reached a recommendation, at the next Sitting immediately following the Committee's final decision on the petition.

(9) Subject to the provisions of this Act, the Committee may, in consultation with the Speaker, regulate its proceedings and perform its functions in a manner as it deems fit.

14. Sitting of the Committee

(1) The Committee may, for the purpose of receiving evidence or for deliberating, sit at a time and a place in the Province as the Chairperson determines.

(2) Evidence presented to the Committee must be heard in public, unless it is reasonable and justifiable to exclude the public and the media in an open and democratic society.

(3) The Chairperson must give the petitioner and all interested and affected parties written notice of the date, time and venue of a Committee meeting containing the relevant petition as an agenda item, at least one week prior to the date of the meeting.

15. Administrative Support Service

The Secretary must provide administration support staff to the Committee to enable it to perform its functions and duties.

16. Procedures relating to Petitions

(1) The administration support service must -

- (a) register every petition received in a Petitions Register;
- (b) open a file for every petition;
- (c) in terms of section 4(4) of this Act, prepare every petition received for consideration by the Committee, which may involve -
 - (i) correction, if possible, of the petition, in consultation with the petitioner, to ensure that a petition complies with the provisions of this Act; and

- (ii) the translation of a petition;
 - (d) prepare a full list of outstanding petitions addressed to Parliament, and make it available to each meeting of the Committee; and
 - (e) present a petition prepared under paragraph (c) to the Chairperson, who must table the petition at a meeting of the Committee for consideration within two (2) weeks of the date on which the Chairperson received the petition.
- (2) The Committee must notify a petitioner within four (4) weeks of the date on which a petition was tabled of -
- (a) the manner in which a petition is being dealt with; and
 - (b) the reasons why it is being dealt with in that particular manner.
- (3) Subject to the right of the Committee to continue to act on the complaint or request if the Committee deems the matter to be of public importance, a petitioner may withdraw a petition.
- (4) The Committee must, after concluding its consideration of a petition in terms of section 13(7), submit the petition file and its recommendation to the Speaker.
- (5) After the submission of a petition under subsection (4), the Speaker must scrutinize the contents of the file within two (2) weeks.
- (6) A Member is entitled to scrutinize the file and the recommendation of the Committee.
- (7) The Speaker may -
- (a) refer the file to the Committee for reconsideration; or
 - (b) refer the file to the Committee for closure, providing written reasons for such action.
- (8) A Member may object to the closing of the file, and must provide reasons for his or her objection.
- (9) The Speaker may supplement this procedure by way of regulations.

17. Content of Committee Report

The Committee, in its report under section 13(8)(b), may recommend to the House that -

- (a) the request contained in the petition be acceded to or that some other relief be granted;
- (b) it is unable to support the request made in the petition; or
- (c) the petition be referred to the National Assembly for consideration.

18. Decision by the House

(1) Parliament may debate the recommendation of the Committee on the petition.

(2) After consideration of the report by the Committee, and possible debate under subsection (1), the House may by vote resolve to -

- (a) accept the recommendation of the Committee, with or without amendment;
- (b) reject the recommendation of the Committee in whole or in part;
- (c) refer the recommendation of the Committee or the petition to the National Assembly in terms of section 104(5) of the Constitution; or
- (d) refer the matter back to the Committee for further consideration and report.

(3) The Secretary must inform the petitioner in writing of the decision of the House with regard to a particular petition, and reasons therefor, within seven days of the decision by the House.

19. Consideration of a Settled Petition

A petition in respect of a matter on which a decision has been taken is not entitled to reconsideration by the Committee, unless that petition provides new facts or relevant evidence that justify a reconsideration of the matter.

20. Witnesses

(1) A petitioner may, at his or her own expense and only with the consent of the Committee, give evidence in support of the petition at a meeting of the Committee.

(2) 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, or produce any book, document or object required by the Committee; 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 or object, before the Committee at the time and place specified in the subpoena.

(3) A subpoena contemplated in subsection (2)(b) must be signed and issued by the Chairperson, and served on the person subpoenaed either by a registered letter sent through the post, or by delivery by a person authorized thereto by the Chairperson, or by any method determined by the Speaker in the form of regulations.

(4) A witness must, before giving evidence, take an oath or make an affirmation administered by the Chairperson, a Member or an employee of the Committee, as the Chairperson may designate.

(5) The Secretary to Parliament must pay to a person, other than an employee of a provincial department, who has been subpoenaed to attend a sitting of the Committee as a witness, or who has given evidence before the Committee, the sum for traveling and attendance time and for transport expenses actually incurred which the person would be entitled to as a witness before a magistrate's court.

21. Offences

(1) A person duly subpoenaed in terms of section 20(2)(b) and (3) who, without sufficient cause -

- (a) fails to attend the meeting of the Committee at the time and place specified in the subpoena; or
- (b) fails to remain in attendance at the meeting of the Committee until the completion of the investigation before the Committee, or until he or she is excused by the Chairperson from further attendance, commits an offence.

(2) A person called as a witness under section 20(2)(a) or (b) who, without sufficient cause -

- (a) refuses to be sworn in or to make an affirmation as a witness after she or he has been requested by the Chairperson to do so;
- (b) after having been sworn in or having made an affirmation, fails to answer fully and satisfactorily any question lawfully put to him or her;
- (c) after having been sworn in or having made an affirmation, gives false evidence before the Committee on a matter, knowing the evidence to be false or not believing it to be true; or
- (d) fails to produce a book, document or object in his or her possession or custody or under his or her control, which he or she has been called to produce, commits an offence.

(3) A person who -

- (a) threatens, obstructs or unduly influences a witness to refrain from giving evidence or to give false evidence before the Committee;
- (b) threatens, obstructs or unduly influences a witness concerning the production of a paper, book, record or document before the Committee;
- (c) with the intent to deceive the Committee, produces before the Committee a false, untrue, fabricated or falsified paper, book, record or document;
- (d) destroys or conceals a book, document or object which to his or her knowledge might be of assistance to the Committee in any matter relating to the subject of its investigation; or
- (e) wilfully furnishes the Committee with information, or makes a statement before it, which is false or misleading, commits an offence.

22. Penalties

A person convicted of an offence in terms of section 21 is liable to a fine or imprisonment for a period not exceeding 12 months, or both a fine and imprisonment.

23. Retention of books, documents or objects by the Committee

The Committee may retain, for a reasonable period after a meeting, a book, document or object that it has requested or subpoenaed a person to produce in terms of section 20(2)(a) or (b).

24. Delegation of powers by Committee

(1) The Committee may delegate its powers to a subcommittee of the Committee in terms of the Standing Rules and Orders of Parliament.

(2) On completion of its mandate, the subcommittee must report its findings to the Committee in writing.

(3) Nothing prevents the Committee from exercising powers delegated to a subcommittee under subsection (1).

25. Accountability to Parliament

(1) The Committee must prepare a quarterly report on every petition it has adjudicated upon for submission to Parliament for consideration.

(2) The Committee must prepare and submit an annual written report of its activities to Parliament.

(3) The annual written report of the Committee must provide for an evaluation of the responsiveness, efficiency and timeousness with which petitions dealt with via the procedure determined under section 13(3) were resolved.

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

(5) Parliament may refer a matter emanating from a report of the Committee back to the Committee for reconsideration.

26. Regulations

The Speaker, after consultation with the Committee, must make regulations required for carrying out the provisions of this Act.

27. Short title and commencement

(1) This Act is called the KwaZulu-Natal Petitions Act, 2003.

(2) This Act comes into operation on a date fixed by the Speaker by proclamation in the *Provincial Gazette*.

FIRST SCHEDULE :**FORM OF PETITION PRESCRIBED BY
THE STANDING RULES AND ORDERS OF
THE KWAZULU-NATAL PARLIAMENT****PETITION**

.....
Signature of Member introducing the petition

**To the Honourable Speaker and Members of
the KwaZulu-Natal Parliament :-**

The Petition of the undersigned

*[insert the name of the petitioner/s or a description of the group of petitioners, and place
of residence or place of business]*

respectfully submits that

*[set out the facts and representations to be brought to the notice of the House and
details of the relief sought]*

The petitioner/s requests / request that the House consider his, her or their submissions
favourably, and grant the relief which it may deem fit.

[signature or witnessed mark of every petitioner]

KWAZULU-NATAL LEGISLATURE**KWAZULU-NATAL PETITIONS ACT, 2003 (ACT NO. 4 OF 2003):
COMMENCEMENT OF ACT**

The Speaker of the KwaZulu-Natal Legislature has, in terms of section 27(2) of the KwaZulu-Natal Petitions Act, 2003 (Act No. 4 of 2003), determined the date of publication of this notice as the date of commencement of the Act.

**TW MCHUNU
SPEAKER OF THE KWAZULU-NATAL LEGISLATURE**

KWAZULU-NATAL LEGISLATURE**KWAZULU-NATAL PETITIONS ACT, 2003 (ACT NO. 4 OF 2003):
PROMULGATION OF REGULATIONS**

The Speaker of the KwaZulu-Natal Legislature has, in terms of section 26 of the KwaZulu-Natal Petitions Act, 2003 (Act No. 4 of 2003), made the regulations contained in the Schedule.

TW MCHUNU
SPEAKER OF THE KWAZULU-NATAL LEGISLATURE

SCHEDULE**KWAZULU-NATAL PETITIONS ACT, 2003 (KZN Act No. 4 of 2003)****REGULATIONS RELATING TO
THE SUBMISSION AND CONSIDERATION OF PETITIONS**

The Speaker of the KwaZulu-Natal Legislature has, in terms of section 26 of the **KwaZulu-Natal Petitions Act, 2003 (KZN Act No. 4 of 2003)**, made the regulations contained in the Schedule.

SCHEDULE**ARRANGEMENT OF REGULATIONS**

1. Definitions
2. Application of Regulations
3. Responsibilities of the Committee
4. Rights of a Petitioner
5. Submission
6. Registration of Petition
7. The Petition File
8. Preliminary investigation of Petition
9. Declaration of Personal Interest and Referral
10. Committee
11. Closure and Submission of Petition after Decision by the House
12. Right of Appeal

13. Parliament not in Session
14. Conflict of Interest
15. Short title

Annexure A

Definitions

1. In these regulations, unless the context indicates otherwise, any word or expression defined in the **KwaZulu-Natal Petitions Act, 2003 (KZN Act No. 4 of 2003)** has that meaning, and -

“**appeal**” means an appeal in terms of regulation 12;

“**administrative support service**” means the administrative support contemplated in section 15;

“**petition file**” means the file contemplated in regulations 6(1)(b) and 7;

“**Petitions Register**” means the register contemplated in regulation 6(1)(a);

“**statement of complaint**” means the subject matter of a petition and any information provided by the petitioner; and

“**the Act**” means the **KwaZulu-Natal Petitions Act, 2003 (KZN Act No. 4 of 2003)**.

Application of Regulations

2. These regulations apply to any petition submitted in accordance with the Act.

Responsibilities of the Committee

3. The Committee must, from time to time, take reasonable steps to —

(a) inform the citizens of the province of their rights in terms of the Act;

(b) inform the citizens of the province of the physical address, postal address, electronic address or fax number where a petition may be submitted;

(c) exercise maximum accountability and transparency in the consideration of a petition;

(d) where appropriate, or if requested to do so by a petitioner, resolve a dispute, reverse an act or rectify an omission by means of mediation or negotiation;

(e) where appropriate, lodge a complaint with the Public Protector in terms of the Public Protector Act, 1994 (Act No. 23 of 1994), if the conduct of a person or body to whom a petition has been referred, is unsatisfactory;

(f) assume a supervisory role in respect of the administrative support service;

(g) in general, issue directions to the administrative support service in respect of preliminary investigations;

(h) instruct the administrative support service to report to it on the efficacy of the processes of public participation and petitions;

(i) instruct the administrative support service to organize and manage programmes designed to promote, advertise or popularize public participation and petitions; and

(j) ensure that persons or categories of persons previously disadvantaged by unfair discrimination enjoy full participation in the process of provincial government.

Rights of a Petitioner

4. Subject to compliance with the Act, a petitioner has the right -