

GAUTENG PROVINCIAL LEGISLATURE

**GENERAL LAWS AMENDMENT
BILL, 2005**

(As introduced by the Leader of Government Business)

[G004—2005]

BILL

To amend certain laws of Gauteng so as to correct references to defunct institutions and inconsistencies with other legislation; to repeal certain laws that are contrary to the Constitution of the Republic of South Africa, 1996, or no longer serve any useful purpose; and to provide for matters connected thereto.

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

Amendment of section 1 of Ordinance 4 of 1933

1. Section 1 of the Statutory Publications Ordinance, 1933 (Ordinance No. 4 of 1933) is hereby amended by the substitution for subsection (1) of the following subsection: 5

“(1) Whenever any law confers the power or imposes the duty upon the [Administrator] Premier, or upon any person in the service of the [Transvaal] Provincial Administration, to publish any information whatsoever in any newspaper, the [Administrator] Premier may in his or her discretion direct, either in any particular instance or in general in regard to all or any such publications, that such information be published in the *Provincial Gazette* in lieu of such newspaper, or if such law provides for the publication of such information in the *Provincial Gazette* and in any newspaper, that it be published in the *Provincial Gazette* only, and in either case the [Administrator] Premier may in his or her discretion cause to be published, in such manner and form and at such time as he or she may determine, in any newspaper wherein the said information should have been published in terms of the said law, a concise notice directing attention to the publication of such information in the *Provincial Gazette*.” 10 15

Amendment of section 1 of Ordinance 4 of 1949

2. Section 1 of the Abolition of Dog Race Meetings and the Prohibition of Betting on Dog Races Ordinance, 1949 (Ordinance No. 4 of 1949) is hereby amended by the deletion of the definition of “Administrator”. 20

Amendment of section 2 of Ordinance 4 of 1949

3. Section 2 of the Abolition of Dog Race Meetings and the Prohibition of Betting on Dog Races Ordinance, 1949 (Ordinance No. 4 of 1949) is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: 25

“(a) hold any dog race meeting in the Province [of Transvaal];”.

Amendment of section 1 of Act 63 of 1970 as substituted by Proclamation R28 of 7 April 1995

4. Section 1 of the Mountain Catchment Areas Act, 1970 (Act 63 of 1970) is hereby amended— 30

(a) by the deletion of the definition of “Director-General” as inserted by section 1(c) of Act 76 of 1981; and

(b) by the insertion after the definition of the word “*Gazette*” of the following definition: 35

“‘Head of Department’ means the Head of the Department of Agriculture, Conservation and Environment in the Province;”.

Amendment of section 1 of Act 9 of 1972

5. Section 1 of the National Road Safety Act, 1972 (Act No. 9 of 1972) is hereby amended:

- (a) by the deletion of definition of “Director-General”; and
- (b) by the insertion after the definition of “fund” of the following definition— 5
 “ ‘Head of Department’ means the Head of Department of Public
 Transport, Roads and Works in the Province;”.

Amendment of section 1 of Act 63 of 1977

6. Section 1 of the Health Act, 1977 (Act No. 63 of 1977) is hereby amended by the insertion after the definition of the word “dwelling” of the following definition: 10
 “ ‘Head of Department of Health’ means the Head of Department of Health in the
 Province;”.

Amendment of section 1 of Act 78 of 1977

7. Section 1 of the Urban Transport Act, 1977 (Act No. 78 of 1977) is hereby amended— 15

- (a) by the deletion of the definitions of “Administrator”; “Director-General” and “local authority”;
- (b) by the insertion after the definition of “guide plan committee” of the following definitions: 20
 “ ‘Head of Department’ means Head of Department of Public Transport, Roads and Works in the Province;”
 “ ‘MEC’ means the Member of the Executive Council responsible for public transport in the Province;”
 “ ‘municipality’ means a local, district or metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);” and 25
- (c) by the insertion after the definition of “Minister of Finance” of the following definition: 30
 “ ‘municipality’ means a local, district or metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);”.

Amendment of section 1 of Ordinance 20 of 1982, as amended by para. 1 of Part 1 of Proc. R. 30 of 1995

8. Section 1 of the Transvaal Provincial Library and Museum Service Ordinance, 1982 (Ordinance No. 20 of 1982) is hereby amended— 35

- (a) by the deletion of the definitions of “Administrator”, “local authority” and “province”;
- (b) by the substitution for the definition of “library service” of the following definition: 40
 “ ‘library and information service’ [**“library service”, in so far as a provision of this Ordinance is applied in or with reference to a particular province,**] means the library and information service established for [**that province**] the Province by section 2;”;
- (c) by the insertion after the definition of “library service” of the following definitions: 45
 “ ‘MEC’ means the Member of the Executive Council responsible for arts and culture in the Province;”
 “ ‘municipality’ means a local, district or metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);” and 50
- (d) by the substitution for the definition of “museum service” of the following definition: 55
 “ ‘museum service’ [**in so far as a provision of this Ordinance is applied in or with reference to a particular province,**] means the museum service established for [**that province**] the Province by section 2;”.

Substitution of section 2 of Ordinance 20 of 1982, as substituted by para. 2 of Part 1 of Proc. R. 30 of 1995

9. The following section is hereby substituted for section 2 of the Transvaal Provincial Library and Museum Service Ordinance, 1982 (Ordinance No. 20 of 1982):

“Establishment of library service and museum service 5

2. (1) A library service and a museum service are hereby established for **[each province] the Province.**

(2) The Transvaal Provincial Library Service and the Transvaal Provincial Museum Service which in terms of this Ordinance existed immediately before the assignment of the administration of this Ordinance under section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), to **[a competent authority within the government of a province] the Province**, shall cease to exist with effect from the date of such assignment.” 10

Substitution of section 9 of Ordinance 20 of 1982 15

10. The following section is hereby substituted for section 9 of the Transvaal Provincial Library and Museum Service Ordinance, 1982 (Ordinance No. 20 of 1982):

“Short title and commencement

9. This Ordinance shall be called the **[Transvaal] Gauteng** Provincial Library and Museum Service Ordinance, 1982, and shall come into operation on 1 January 1983.” 20

Amendment of section 1 of Ordinance 12 of 1983, as amended by para. 1 of Proc. 25 of 1991 and para. 1 of Proc. R. 22 of 1995

11. Section 1 of the Nature Conservation Ordinance, 1983 (Ordinance No. 12 of 1983) is hereby amended— 25

- (a) by the substitution for the definition of “Administration” of the following definition:
 - “ ‘Administration’ [, **in so far as a provision of this Ordinance is applied in or with reference to a Particular Province,**] means the Gauteng provincial administration **[established for that Province by the Public Service Act, 1994 (Proclamation No. 103 of 1994)];**” 30
- (b) by the deletion of the definition of “Administrator”;
- (c) by the insertion after the definition of “live fish” of the following definition:
 - “ ‘MEC’ means the Member of the Executive Council responsible for conservation and environmental affairs in the Province;” 35
- (d) by the substitution for the definition of “Province” of the following definition:
 - “ ‘Province’ means the **[province Eastern Transvaal, Northern Transvaal, North-West or Pretoria-Witwatersrand-Vereeniging established in terms of section 124 of the Constitution of the Republic of South Africa, 1993] Gauteng Province;**” 40

Substitution of section 2 of Ordinance 12 of 1983, as substituted by para. 3 of Proc. R. 22 of 1995

12. The following section is hereby substituted for section 2 of the Nature Conservation Ordinance, 1983 (Ordinance No. 12 of 1982): 45

“Establishment of Nature Conservation Division.

2. (1) A Nature Conservation Division is hereby established for **[each province] the Province.**

(2) The Nature Conservation Division which in terms of this Ordinance existed immediately before the assignment of the administration of this 50

Ordinance under section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), to **[a competent authority within the government of a province]** the Province, shall cease to exist with effect from the date of such assignment.”.

Substitution of section 3 of Ordinance 12 of 1983, as substituted by para. 4 of Proc. R. 22 of 1995 5

13. The following section is hereby substituted for section 3 of the Nature Conservation Ordinance, 1983 (Ordinance No. 12 of 1983):

“**3. Objects of Nature Conservation Division.**—**[In so far as a provision of this Ordinance is applied in or with reference to a particular province, the]** 10
The objects of the Nature Conservation Division shall be the advancement, control and administration of nature conservation in [that] the Province.”.

Amendment of section 5 of Ordinance 12 of 1983, as amended by para. 6 of Proc. R. 22 of 1995

14. Section 5 of the Nature Conservation Ordinance, 1983 (Ordinance No. 12 of 1982) is hereby amended by the substitution for subsection (3) of the following subsection: 15

“(3) The Nature Conservation Advisory Board which in terms of this Ordinance existed immediately before the assignment of the administration of this Ordinance under section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act 20 No. 200 of 1993), to **[a competent authority within the government of a]** the Province, shall cease to exist with effect from the date of such assignment.”. 20

Amendment of section 1 of Act 81 of 1988, as amended by section 15 of Act 108 of 1993 and section 1 of Act 7 of 2000

15. Section 1 of the Conversion of Certain Rights into Leasehold or Ownership Act, 1988 (Act No. 81 of 1988) is hereby amended— 25

(a) by the deletion of the definitions of “Administrator”; “Director-General” and “local authority”;

(b) by the substitution for the definition of “affected site” of the following definition: 30

“ ‘affected site’ means a site which is or purports to be occupied by virtue of a site permit, a certificate, a trading site permit, or a permit issued by the **[local authority]** municipality concerned conferring upon the holder thereof rights which **[in the opinion of the secretary concerned]** are similar to the rights which are held by the holder of a site permit, certificate or trading site permit;” 35

(c) by the insertion after the definition of “formalized township” of the following definitions:

“ ‘Head of Department’ means the Head of the Department of Housing in the Province; 40

‘MEC’

(a) in relation to any matter referred to in sections 2 and 3 of this Act, means the adjudication panel and appeal panel contemplated in section 24B of the Gauteng Housing Act, 1998 (Act No. 6 of 1998), as amended; and 45

(b) in relation to any other matter referred to in this Act, means the Member of the Executive Council responsible for housing matters in the Gauteng Province;

‘municipality’ means a local, district or metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) and, for purposes of section 6(1) of this Act, includes a former local authority established under the Black Local Authorities Act, 1982 (Act No. 102 of 1982) and an Administrator or public authority referred to in section 3 or 5 of the Abolition of Development Bodies Act, 1986 (Act No. 75 of 1986);” 50
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- (d) by the substitution for the definition of “publish” of the following definition:
 “ ‘publish’, in relation to a notice, means the publication of the notice—
 (a) by publishing it either in the [**Official**] Provincial Gazette [**of the province concerned**] or in at least two newspapers in English and one other official language circulating in the area concerned; and 5
 (b) by affixing it at a prominent place at the office of the [**local authority**] municipality concerned and at such other public buildings in the area concerned as the Director-General may determine;” ; and
 (e) ~~by the substitution~~ for the definition of “trading site permit” of the 10
 “ ‘trading site permit’ means a permit issued by a [**local authority**] municipality allowing the person named therein to occupy a trading site.”.

Amendment of section 2 of Act 81 of 1988, as amended by section 16 of Act 108 of 1993 15

16. Section 2 of the Conversion of Certain Rights into Leasehold or Ownership Act, 1988 (Act No. 81 of 1988) is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The Director-General shall conduct an inquiry in the prescribed manner in respect of affected sites within [**his province**] the Province in order to determine 20
 who shall be declared to have been granted a right of leasehold or, in the case where the affected sites are situate in a formalized township for which a township register has been opened, ownership with regard to such sites.”.

Amendment of section 5 of Act 81 of 1988, as amended by section 68 of Act 67 of 1995 and section 18 of Act 108 of 1993 25

17. Section 5 of the Conversion of Certain Rights into Leasehold or Ownership Act, 1988 (Act No. 81 of 1988) is hereby amended by the substitution for subparagraph (ii) of paragraph (a) of subsection (1A) of the following subparagraph:

- “ ‘if the owner of the affected site is the State or any [**local government body**] municipality, any officer in the public service or person in the employ of such 30
 [**local government body**] municipality, as the case may be, who has been designated for the purpose by the Minister of Land Affairs, [a] the Premier or a [**local government body**] municipality, as the case may be.”.

Amendment of section 9 of Act 81 of 1988

18. Section 9 of the Conversion of Certain Rights into Leasehold or Ownership Act, 1988 (Act No. 81 of 1988) is hereby amended by the substitution for the words preceding paragraph (a) of the following words: 35

- “[**An Administrator**] The MEC may [**in relation to his province**] make regulations as to—”.

Amendment of section 10 of Act 81 of 1988 40

19. Section 10 of the Conversion of Certain Rights into Leasehold or Ownership Act, 1988 (Act No. 81 of 1988) is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) [**An Administrator**] The MEC may delegate any power conferred upon him by or under this Act, other than the power under section 9 to make regulations, 45
 to an officer in the [**Provincial administration**] Department concerned”.

Amendment of section 1 of Act 71 of 1991, as amended by section 1 of Act 186 of 1993

20. Section 1 of the Businesses Act, 1991 (Act No. 71 of 1991) is hereby amended—
 (a) by the deletion of the definitions of “Administrator” and “local authority”; 50
 (b) by the substitution for the definition of “licensing authority” of the following definition:

- “ ‘licensing authority’ means any **[local authority]** municipality, or person or body, designated or appointed under section 2 as a licensing authority;”;
- (c) by the insertion after the definition of “licensing authority” of the following definition: 5
 “ ‘MEC’ means the Member of the Executive Council responsible for finance and economic affairs in the Province;”;
- (d) by the substitution for the definition of “Minister” of the following definition: 10
 “ ‘Minister’ means the Minister of Trade and Industry **[and Tourism]**, acting after consultation with **[every Administrator or the Administrator concerned]** the MEC in the Province, [as the case may be];”;
- (e) by the insertion after the definition of “MEC” of the following definition: 15
 “ ‘municipality’ means a local, district or metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);”;
- (f) by the substitution for the definition of “regulation” of the following definition:
 “ ‘regulation’ means a regulation made by **[an Administrator]** the MEC under section 6(1) or 6A(4)(a)(i);”.

Amendment of section 2 of Act 71 of 1991, as amended by section 2 of Act 186 of 1993 20

21. Section 2 of the Businesses Act, 1991 (Act No. 71 of 1991) is hereby amended—
- (a) by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs: 25
 “(a) **[An Administrator]** The MEC may by notice in the **[Official]** Provincial Gazette designate a **[local authority]** municipality, or appoint any person or body, as a licensing authority for an area which the **[Administrator]** MEC specifies or defines in the notice, to undertake from a date specified in the notice the licensing of businesses in the area concerned; 30
 (b) A **[local authority]** municipality may so be designated or appointed for any area, whether in or outside its own jurisdiction, **[but in the province concerned,]** including the area of jurisdiction of any other **[local authority]** municipality or any part of such area.”; and
- (b) by the substitution for subsection (2) of the following subsection: 35
 “(2) **[An Administrator]** The MEC may at any time, after consultation with the relevant licensing authority, amend or withdraw a notice under subsection (1) by notice in the **[Official]** Provincial Gazette.”.

Amendment of section 5 of Act 71 of 1991

22. Section 5 of the Businesses Act, 1991 (Act No. 71 of 1991) is hereby amended by 40
 the substitution for paragraph (b) of subsection (4) of the following paragraph:
 “(b) in any other case, to the **[Administrator concerned]** MEC.”.

Amendment of section 6 of Act 71 of 1991, as amended by section 3 of Act 186 of 1993

23. Section 6 of the Businesses Act, 1991 (Act No. 71 of 1991) is hereby amended by 45
 the substitution for the words preceding paragraph (a) of subsection (1) of the following words:
 “[**An Administrator]** The MEC may make regulations **[for his province]** regarding—”.

Amendment of section 7 of Act 71 of 1991 50

24. Section 7 of the Businesses Act, 1991 (Act No. 71 of 1991) is hereby amended by
 the substitution for subsection (2) of the following subsection:
 “(2) The repeal or amendment by subsection (1) of any particular law shall take effect **[in a province]** on a date determined by the **[Administrator]** Premier by proclamation in the **[Official]** Provincial Gazette.”. 55

Repeal of laws

25. The laws specified in the second column of the First Schedule to this Act are hereby repealed to the extent indicated in the third column, in so far as they are applicable in, or have been assigned to, the Gauteng Province.

Amendment of laws

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26. (1) The Mountain Catchment Areas Act, 1970 (Act 63 of 1970) is hereby amended by the substitution for the word “Director-General” in sections 2A; 8; 9; 11; and 14 of the word “Head of Department”.

(2) The National Road Safety Act, 1972 (Act No. 9 of 1972) is hereby amended by the substitution of the word “Director-General” in sections 5; 6 and 7 of the word “Head of Department”.

(3) The Health Act, 1977 (Act No. 63 of 1977) is hereby amended by the substitution for the word “Director-General” in sections 18; 22; 23; 28 and 53 of the word “Head of Department of Health”.

(4) The Urban Transport Act, 1977 (Act 78 of 1977) is hereby amended by the substitution of the word “Director-General” in section 5 of the word “Head of Department”.

(5) The Transvaal Provincial Library and Museum Service Ordinance, 1982 (Ordinance No. 20 of 1982) is hereby amended by the substitution for the word “library service” of the word “library and information service”.

(6) The Conversion of Certain Rights into Leasehold or Ownership, 1988 (Act No. 81 of 1988) is hereby amended by the substitution for the word “Director-General” in sections 2-7 and 10 of the word “Head of Department”.

(7) The laws specified in the second column of the Third Schedule to this Act are hereby amended by the substitution for the words “local authority” or “local authorities”, wherever they occur in the provisions indicated in the third column, of the word “municipality” or “municipalities” respectively.

(8) The laws specified in the second column of the Second Schedule to this Act are hereby amended by the substitution for the word “Administrator” or ‘Administrator concerned’, wherever they occur in the provisions indicated in the third column, of the word “MEC”.

(9) The laws specified in the second column of the Fourth Schedule of this Act are hereby amended by the insertion after the words “he” and “his” and “him” and “himself”, wherever they occur in the provisions indicated in the third column, of the words “or she” and “or her” and “or her” and “or herself”, respectively; and by the substitution for the word “chairman”, wherever it occurs, of the word “chairperson”.

Short title

27. This Act is called the General Law Amendment Act, 2005.

FIRST SCHEDULE

Laws Repealed

<i>Number and Year</i>	<i>Short Title</i>	<i>Extent of Repeal</i>	
Ordinance No. 4 of 1949	Abolition of Dog Race Meetings and the Prohibition of Betting on Dog Races Ordinance	Section 4	5
Act No. 47 of 1963	Coloured Persons Education Act	The whole	10
Act No. 61 of 1965	Indians Education Act	The whole	
Ordinance No. 8 of 1978	Extra-Territorial Ordinance	The whole	
Act No. 90 of 1979	Education and Training Act	The whole	15
Act No. 104 of 1981	Technical Colleges Act	The whole	
Act No. 35 of 1983	Culture Promotion Act	The whole	
Act No. 80 of 1988	Transport Deregulation Act	The whole	
Act No. 65 of 1989	Cultural Affairs Act (House of Assembly)	The whole	20
Act No. 71 of 1991	Businesses Act	Section 6A(4)	
Act No. 1 of 1995	Payment of Members of the Provincial Legislature Act	The whole	25
Act No. 13 of 1998	Gauteng College Education and Training Act	The whole	

SECOND SCHEDULE

Laws amended by the substitution for the words “Administrator” or “Administrator concerned”, wherever they occur, of the word “MEC”.

<i>Number and Year</i>	<i>Short Title</i>	<i>Section Amended</i>	
Act No. 77 of 1977	Urban Transport Act	Sections 3, 4, 5, 6, 7, 8A, 9, 11, 12, 13, 14, 15, 16, 17, 18,19, 21, 23, 24, and 25	5
Ordinance No. 20 of 1982	Transvaal Provincial Library and Museum Service Ordinance	Sections 3, 4, 5(1), 6(1) and 7	10
Ordinance No. 12 of 1983	Nature Conservation Ordinance	Sections 4, 5(1), 5(2), 6(1), 7, 8, 9(3), 10, 12, 13(1), 14, 15(2), 17(1), 30(1), 33(1), 43(2), 44(2), 45(2), 46(1), 46(4) 47(1), 51(2), 51(3), 51(4), 51(5) 56(2), 59(1), 59(2), 60(1), 60(2), 61(4), 61(6), 62, 63(1), 63(2), 64, 65, 68, 70(2), 82(1), 85(2), 86(2), 94(1), 97(2), 97(3), 98(1), 100(1), 100(2), 100(3), 100(4), 100(5), 100(6), 101, 102(1), 102(3), 103, 104, 105, 109, 110(2), 112(2) and 112(3)	15 20 25 30
Act No. 81 of 1988	Conversion of Certain Rights into Leasehold or Ownership Act	Sections 2(5), 3(1), 3(2), 3(4), 3(6), 6(1), 10(2) and 10(3)	35
Act No. 71 of 1991	Businesses Act	Sections 6(4), 6A(1) and 6A(2)	40

THIRD SCHEDULE

Laws amended by the substitution for “local authority” or “local authorities”, wherever they occur, of “municipality” or “municipalities” respectively.

<i>Number and Year</i>	<i>Short Title</i>	<i>Section Amended</i>	
Ordinance No. 20 of 1982	Transvaal Provincial Library and Museum Service Ordinance	Section 3	5
Act No. 81 of 1988	Conversion of Certain Rights into Leasehold or Ownership Act	Section 2(2), 5(1), 5(4), 6(1) and 7	10
Act No. 71 of 1991	Businesses Act	Sections 2(1), 5(4), 6(1), 6(2), 6A(1), 6A(2) and 6A(3)	15

FOURTH SCHEDULE

Laws amended by the insertion after the words “he” and “his” and “him” and “himself”, wherever they occur in the provisions indicated in the third column, of the words “or she” and “or her” and “or her” and “or herself”, respectively; and by the substitution for the word “chairman”, wherever it occurs, of the word “chairperson”. 5

<i>Number and Year</i>	<i>Short Title</i>	<i>Section Amended</i>	
Ordinance 12 of 1983	Nature Conservation Ordinance	Sections 1, 4, 8, 9, 12, 14, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 59, 60, 61, 63, 64, 65, 66, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 85, 87, 88, 89, 90, 91, 93, 94, 95, 96, 98, 99, 100, 101, 102, 104, 105, 106, 107, 108, 110, and 112	10 15 20
Act No. 81 of 1988	Conversion of Certain Rights into Leasehold or Ownership Act	Sections 2, 3, 5, 7, 9, 10, and 11	25
Ordinance No. 20 of 1982	Transvaal Provincial Library and Museum Services Ordinance	Section 4, 5, 6, and 7	

EXPLANATORY MEMORANDUM ON THE OBJECTS OF THE GENERAL LAW AMENDMENT BILL, 2005

1. REASONS FOR THE BILL

1.1 Purpose of the Bill

The Bill is being introduced to repeal certain laws of Gauteng which are inconsistent with the Constitution of the Republic of South Africa, 1996 other legislation or which no longer serves any useful purpose and to amend certain laws which makes references to defunct institutions . 5

1.2 Background

The Executive Council resolved during the previous term to embark on a project to rationalise Gauteng legislation to align the Gauteng statute book with the Constitution by undergoing a streamlining exercise. The project *inter alia* identified outdated references and functionaries and recommended solutions for the replacement thereof as well as the repeal of legislation that is no longer required. The project was not intended to rethink policy to change direction but rather to effect a cleaning up process to bring the Gauteng statute book in line with current policy. 10 15

1.3 Discussion

The State Law Advisers appointed a consortium of consultants that consisted of Ashira Consulting (Pty) Ltd and the Centre for Applied Legal Studies of the University of the Witwatersrand. Their terms of reference were to identify and address the following issues: 20

- provisions that were unconstitutional, focusing only on discriminatory clauses that infringed the right to equality [s9 of the Constitution], reverse onus clauses that infringed the right to be presumed innocent [S35(3)(h) of the Constitution] and clauses that infringed the right to just administrative action [s33 of the Constitution]; 25
- outdated references to functionaries and other legislation;
- provisions containing sexist language; and
- defunct legislation being legislation that was no longer necessary or superseded by other legislation. 30

1.4 Process

The Gauteng legislation which was targeted in the project totaled 106 pieces of legislation, of which 70 were Acts and 36 were Ordinances. The majority of the target legislation was inherited by the Province. The consultants extensively liaised with departments to identify the target legislation. 35

The overriding principle which governed the process concerned the distinction between what the consultants termed “textually redundant” and “operationally redundant” provisions. Textually redundant provisions are provisions which on the face of it are in conflict with or have been superseded by other legislation but may still be used or required by departments. Operationally redundant provisions are textually redundant provisions which have been confirmed by departments to be no longer necessary. 40

The consultants together with the departments identified provisions which were “operationally redundant”. If a provision was determined to be textually redundant by the consultants but the department determined that the provision was still in use (not operationally redundant) it was not recommended for amendment as the department would have to initiate a separate policy process to determine how to deal with the provision. If it was declared operationally redundant, it was recommended for repeal. 45 50

1.5 Outcome

The project resulted in two draft Amendment Bills, the Local Government Laws Amendment Bill, 2005 and the General Law Amendment Bill, 2005.

2. EXPLANATION OF THE BILL

2.1 Constitutional Provisions:

(a) Section 9 — The right to equality

Provisions in Gauteng legislation that infringe section 9 of the Constitution are recommended for repeal and listed in the First Schedule of this Bill. 5

(b) Section 35(3)(h) — The right to be presumed innocent

Only 4 provisions in Gauteng legislation infringes section 35(3)(h) of the Constitution and these provisions were dealt with as follows:

- 1 provision is recommended for repeal in the First Schedule of this Bill; and 10
- the 3 remaining provisions are recommended for amendment.

2.2 Sexist Language

Sexist language is dealt with in the Fourth Schedule of the Bill. All offending provisions in relevant legislation are recommended for amendment in one general clause by inserting female terminology next to male terminology wherever it occurs. The specific legislation and sections that require amendment are contained in the allocated columns. This is the most expeditious method of amending these clauses. 15

2.3 References to defunct functionaries and institutions 20

References to defunct functionaries and institutions have been amended throughout the Bill to reflect the current position, for example, the word “Administrator” has been substituted for the word “Premier”.

2.4 Defunct Legislation

Defunct legislation is dealt with either through repeal in the First Schedule of the Bill or left untouched due to separate policy processes that must be initiated by the relevant departments and is due for repeal at a later stage. 25

2.5 References to “Director-General”

Provisions in legislation that refer to the “Director General” as head of the Province are addressed by substituting “Director General” with the relevant Head of Department to reflect the new dispensation as espoused in the Public Service Act, 1994. 30

3. IMPLICATIONS OF THE BILL

3.1 Social Implications

None. 35

3.2 Environmental Implications

None.

3.3 Financial Implications

None, except for the cost of the publication of the Bill.

3.4 Communication Implications 40

None.

3.5 Constitutional Implications

None.

4. CONSULTATION

4.1 All affected Departments and bodies were consulted. 45

5. CLAUSE BY CLAUSE EXPLANATION

(a) The Bill was approved by the Legislation Sub-Committee on 04 May 2005.

- (b) Two proposals were made by the MEC for Sports, Recreation, Arts and Culture in respect of the Transvaal Provincial Library and Museum Ordinance 20, 1982, namely:
- that the definition of the word “library service” be substituted for the word “library and information service” as the latter reflects the new technological developments and its broadening impact on service delivery and is an internationally acceptable phrase for the profession, while the former reflects an old, reactive service that focuses primarily on lending services, and
 - that the definition of the word “municipality” should omit reference to the word “district” as this purports to assign to district municipalities powers which they don’t have in terms of the Ordinance.
- (c) These proposals had been dealt with as follows:
- the definition of the word “library service” has been substituted for the definition of the word “library and information service” in section 8(b) of the bill, and the word “library service” has been substituted for the word “library and information service” in section 26(5) of the bill; and
 - the definition of the word municipality has not been amended as proposed as the substitution of the word does per se assign powers to district municipalities, but merely remove reference to local authority as a defunct institution. Further, the definition aligns with the Local Government: Municipal structures Act, 1998 (Act No. 117 of 1998).

5.1 SECTIONS 1-3 AND 6-24 OF THE BILL: AMENDMENT PROVISIONS — DEFUNCT INSTITUTIONS

- 5.1.1 These sections amend certain sections of certain laws to remove references to defunct institutions or to substitute a new institution for a defunct institution. Sexist language is also amended where the provisions amended in a particular statute contain all the sexist language used in that statute. Where this is not the case, sexist language has not been amended to avoid inconsistency between the usages of pronouns in one and the same statute.
- 5.1.2 The amendments in these sections are additional to those made by mere substitution in the second and third schedules of the bill. It was necessary to effect these amendments in the ordinary manner because they go beyond the mere substitution of one word for another.

5.2 SECTIONS 4 AND 5 OF THE BILL: AMENDMENT PROVISIONS — REFERENCE TO THE WORDS “DIRECTOR-GENERAL”

- 5.2.1 These sections amend sections of certain laws to remove reference to the words “Director-General”.

5.3 SECTION 25 OF THE BILL: REPEAL OF CERTAIN LAWS AND CERTAIN SECTIONS OF CERTAIN LAWS

- 5.3.1 This section repeal the laws specified in the second column of the first schedule in the Bill to the extent indicated in the second column in so far as they are applicable in, or have been assigned to, the Gauteng Province.
- 5.3.2 The repeal may extend to an entire Act or Ordinance or it may only repeal certain sections in an Act or Ordinance.

5.4 SECTION 26 OF THE BILL: DEFUNCT INSTITUTIONS

- 5.4.1 Sections 26(1)-(4) and (6) deals with the substitutions for the words “Director-General” of the words “Head of Department”.
- 5.4.2 Section 26(5) substitutes the word “library service” of the word “library and information service”.
- 5.4.3 Section 26(7) of the Bill amend laws specified in the second column of the third schedule of the bill by the substitution of the words “local authority” or “local authorities” wherever they occur in the provisions indicated in the third column with the words “municipality” or “municipalities”.

- 5.4.4 The term “local authority” no longer exists in the lexicon of the new constitutional system in South Africa. It has been replaced by the term “municipality”.
- 5.4.5 The reference to the defunct institution of the Administrator is replaced with a reference to the new institution of the “MEC” in the particular circumstances and context of those provisions in the third column — section 26(8). 5
- 5.4.6 Section 26(9) of the Bill replaces sexist language in certain laws with non-sexist language where appropriate.

5.5 SECTION 27 OF THE BILL: SHORT TITLE AND COMMENCEMENT 10

This section provides for the short title of the Act.