

GAUTENG PROVINCIAL LEGISLATURE

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**GAUTENG TOURISM  
AMENDMENT BILL, 2006**

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*(As introduced by)*

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**[G002—2006]**

**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.

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## BILL

**To amend the Gauteng Tourism Act, so as to incorporate the Gauteng Tourism Authority as a provincial public entity; to provide for the establishment of the Board; to provide for the appointment of the chief executive officer; to disestablish the Tourism Advisory Committee; and to provide for matters incidental thereto.**

**B**E IT ENACTED by the Provincial Legislature of Gauteng as follows:—

**Amendment of section 1 of Act No. 10 of 2001**

1. Section 1 of the Gauteng Tourism Act, 2001 (hereinafter referred to as “the principal Act”) is hereby amended by— 5
- (a) the substitution for the definition of “*chief executive officer*” of the following definition:  
“**Chief Executive Officer**” means a person appointed in terms of section [5] 6; 10
  - (b) the deletion of the definition of “*Committee*”.
  - (c) the insertion after the definition of “*Fund*” of the following definition:  
“**Head of Department**” means the head of department responsible for tourism in the Province;” 10
  - (d) the deletion of the definition of “*Standing Committee*”;
  - (e) the insertion after the definition of “*spouse*” of the following definition: 15  
“**strategic plan**” means the strategic plan contemplated by regulation 30 of the Treasury Regulations made in terms of the Public Finance Management Act, 1999;”

**Insertion of section 2A**

2. The Principal Act is amended by the insertion after section 2 of the following 20 section:

**“2A Provincial Policy**

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| <ul style="list-style-type: none"><li>(1) The MEC may issue a policy statement in respect of—</li><li>(a) any matter concerning the oversight and control of tourism activities in the Province;</li><li>(b) any other matter in respect of which the Board exercises powers or performs functions.</li></ul> | 25 |
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- (2) Prior to issuing a policy in terms of subsection (1), the MEC must—
- (a) publish for public comment a notice in the *Provincial Gazette containing a draft of the Policy*;
  - (b) consider written representations received within the period prescribed in the notice.
- (3) The Board must comply with any policy statement issued in terms of subsection (1) when performing any function or exercising any power in terms of section 4.”

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### **Amendment of section 3 of Act No. 10 of 2001**

3. Section 3 of the principal Act is hereby amended by the substitution for section 3 of the following section:

#### **“3 Establishment of the Authority**

- (1) There is hereby established a juristic person called the Gauteng Tourism Authority.
- (2) The Authority is a provincial public entity and is required to comply with the provisions of the Public Finance Management Act which is applicable to public entities.
- (3) For the purposes of the Public Finance Management Act—
- (a) the Board is the accounting authority as contemplated by section 49(2)(a) of the Public Finance Management Act;
  - (b) the MEC is the executive authority as contemplated by section 52 of the Public Finance Management Act; and
  - (c) any delegation of the Board’s responsibilities in terms of the Public Finance Management Act must be in accordance with the provisions of section 56 of that Act.”.

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### **Amendment of section 5 of Act 10 of 2001**

4. Section 5 of the principal Act is hereby amended by—

- (a) the substitution for section 5 of the following section:

#### **“5. Constitution of the Authority**

**[(1) The Authority consists of one (1) member, who is also the Chief Executive Officer of the Authority.]**

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- (1) The Authority consists of—
- (a) a Board appointed by the MEC in terms of this Act; and
  - (b) a Chief Executive Officer.

(2) The MEC appoints the Chief Executive Officer.”.

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- (b) the insertion after section 5 of the following sections:

#### **“5A Appointment of the Board**

- (1) The MEC must constitute and appoint a Board of not less than seven (7) and not more than ten (10) members including:
- (a) officials from the Metropolitan Municipalities in the Province;
  - (b) officials from the District Municipalities in the Province; and
  - (c) The Head of Department or his or her nominee.
- (2) Prior to appointing the members of the Board, the MEC must publish a notice in the Provincial Gazette and advertisements in the media inviting nominations.
- (3) The MEC must ensure that the members of the Board—
- (a) are broadly representative of the population of the Province; and
  - (b) have sufficient knowledge, experience or qualifications relating to tourism in the Province and the responsibilities of Board.
- (4) The MEC must appoint one member of the Board as chairperson and any other member as deputy chairperson, who will act as chairperson of the Board when the chairperson is absent or is unable to perform his or her duties.

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(5) Members of the Board must recuse themselves from deliberating on any issue in respect of which they have any financial interest or any other conflict of interest. 55

**5B Terms of office**

(1) Members of the Board hold office for a period not exceeding three years and are eligible for reappointment. 5

(2) A person appointed to fill a vacancy holds office for the remaining portion of the term of the vacating member.

(3) A member referred to above may resign by giving at least three month's written notice. 10

**5C Disqualification and vacation**

(1) A person may not be appointed as a member of Board if he or she—

(a) is an unrehabilitated insolvent;

(b) is convicted of an offence and has been sentenced to imprisonment without the option of a fine; 15

(c) has, as a result of improper conduct, been removed from an office of trust; or

(d) has been declared by a court to be mentally ill or disordered.

(2) A member of the Board must vacate his or her office if—

(a) he or she resigns; 20

(b) he or she is absent from more than two consecutive meetings of the Board without leave of the chairperson;

(c) he or she becomes disqualified in terms of sub-section (1); or

(d) his or her term of office is terminated under sub-section (3).

(3) The MEC, may at any time, terminate the term of office of any member of the Board or the entire Board if, in the MEC's opinion, there are good reasons for doing so. 25

**5D Conditions of appointment**

(1) The conditions of appointment of members of the Board, who are not in the employ of an organ of state, are determined by the MEC. 30

(2) The conditions of appointment may include remuneration and allowances payable by the Board.

(3) Members who are employed by an organ of state are not entitled to remuneration and allowances but must be reimbursed for expenses incurred in the performance of their functions in terms of this Act. 35

(4) Members are appointed part-time.

**5E Powers of the Board**

(1) The Board is responsible for managing the business and affairs of the Authority.

(2) The Board may do all that is necessary or expedient to perform its functions including— 40

(a) acquiring or disposing of any right in or to property, but ownership in immovable property may be acquired or disposed of only with the consent of the MEC;

(b) opening and operating banking accounts in the name of the Authority; 45

(c) investing any of the Authority's money;

(d) insure the Authority against any loss, damage or risk or any liability it may incur in the application of this Act;

(e) performing legal acts, including acts in association with or on behalf of any other person or organ of state; 50

(f) concluding agreements with organs of state, and other persons; and

(g) instituting or defending any legal action.

(3) The Board may delegate in writing any of its powers to the Chief Executive Officer.

- (4) A delegation in terms of sub-section (3)—
- (a) may be subject to any conditions or restrictions determined by the Board;
- (b) does not prevent the exercise of that power by the Board; and
- (c) may be withdrawn or amended by the Board.

**5F Operating procedures of Board**

- (1) The Board must meet at least four times a year.
- (2) The chairperson of the Board decides when and where the Board will meet, but a majority of Board members may request the chairperson in writing to convene a meeting at a time set out in the request.
- (3) If the chairperson or deputy chairperson is absent from a meeting, the Board may elect another member to preside at that meeting.
- (4) The majority of the members of the Board constitute a quorum for a meeting of the Board.
- (5) Decisions of the Board require a supporting vote of a majority of members present at the meeting.
- (6) The Board must keep minutes of its proceedings and decisions.
- (7) The Board may, by resolution, make rules to further regulate its proceedings.
- (8) The Board may form committees to enable it to perform its functions.
- (9) The Board must determine the composition, rules and procedures of committees established in terms of this section.

**5G Strategic plan**

- (1) Each year the Board must prepare and submit to the MEC a strategic plan for its administration covering the following financial year and the two financial years thereafter, or any other period prescribed under the Public Finance Management Act.
- (2) The strategic plan must comply with any requirements prescribed under the Treasury Regulations made under the Public Finance Management Act, objectives and outcomes identified by the MEC, and must include—
- (a) The Board’s priorities for the financial years to which it relates;
- (b) multi-year projections of revenue and expenditure;
- (c) key performance measures and indicators for assessing The Board’s performance in delivering the desired outcomes and objectives;
- (d) an operational plan, a financial plan, a human resources and performance management plan; and
- (e) the basis for the annual report prepared in terms of section 18(1)(d).
- (3) The MEC may require additional information to be included in the strategic plan.”.

**Amendment of section 6 of Act No. 10 of 2001**

5. Section 6 of the principal Act is hereby amended by the substitution for section 6 of the following section:

**“[6. Conditions of service**

**The MEC determines the terms and conditions of service, remuneration, allowances and other employee benefits of the Chief Executive Officer.]**

**6. Appointment of the Chief Executive Officer**

- (1) The MEC, must appoint a suitably qualified person as the Chief Executive Officer.
- (2) The Chief Executive Officer must be a fit and proper person who possesses knowledge, qualifications and experience in the field of tourism.

(3) The Chief Executive Officer is an employee of the Authority and is accountable to the Board.

(4) The Chief Executive Officer is responsible for the efficient management of the Authority and must perform any duty delegated to him or her by the Board.

(5) The Chief Executive Officer holds office for an agreed term not exceeding three years, and may be re-appointed upon expiry of that term of office.

(6) The MEC may at any time, after consultation with the Board, terminate the appointment of the CEO if in his or her opinion there are sufficient reasons for doing so.”.

**Amendment of section 7 of Act No. 10 of 2001**

6. Section 7 of the principal Act is hereby amended by the substitution for section 7 of the following section:

**“7. Employment contract and performance agreement**

(1) The employment contract of the Chief Executive Officer must be in writing and must incorporate in an appropriate form, the provisions of section 57 of the Public Finance Management Act, 1999.

(2) The Board and the Chief Executive Officer must conclude a performance agreement for the Chief Executive Officer—

(a) within a reasonable time after the appointment of the Chief Executive Officer; and

(b) thereafter, annually within one month of the commencement of each financial year.

(3) The performance agreement must include—

(a) measurable performance objectives and targets that the chief executive officer must meet, and the time frames within which those performance objectives and targets must be met;

(b) standards and procedures for evaluating performance and intervals for evaluation; and

(c) the consequences of substandard performance.”

**Amendment of section 8 of Act No. 10 of 2001**

7. Section 8 of the principal Act is hereby amended by—

(a) the substitution for subsection (2) of the following subsection:

“(2) The Board may at any time, recommend the termination of the employment of the Chief Executive Officer to the MEC if, in the opinion of the Board, sufficient reason exists to do so: Provided that the Chief Executive Officer is given the opportunity to be heard.”

(b) the insertion after subsection (2) of the following subsection—

“(3) If the Chief Executive Officer is unable to fulfill his or her functions, the MEC may appoint an acting Chief Executive Officer who shall have all the powers and duties of the Chief Executive Officer.”

**Amendment of section 9 of Act No. 10 of 2001**

8. Section 9 of the principal Act is hereby amended by the substitution for section 9 of the following section:

**“9. Disclosure of interest and conflict of interests**

(1) The Chief Executive Officer must disclose to the [MEC] Board any [direct or indirect interest or potential] financial interest or any other conflict of interest which he or she or his or her immediate family member, business partner or associate has in the tourism industry.

(2) In any matter where the Chief Executive Officer is required to make a decision or take action and where a conflict [or potential conflict] as contemplated in subsection (1) exists or possibly exists—

- (a) the Chief Executive Officer must refer the matter to the [MEC] Board;
  - [(b) the MEC must obtain the prior advice of the Committee on the conflict or potential conflict in relation to the required decision or action;
  - (c) the MEC must thereafter determine what the appropriate decision or action is that the Chief Executive Officer has to take and may prescribe conditions applicable to such determination; and
  - (d) the MEC must, in writing, inform the Chief Executive Officer of his or her determination.]
  - (e) the Board must thereafter determine what the appropriate decision or action is that the Chief Executive Officer has to take and may prescribe conditions applicable to such a determination; and
  - (f) the Board must, in writing, inform the Chief Executive Officer of its determination.
- (3) The Chief Executive Officer must follow the determination of the [MEC] Board as contemplated in subsection (2)(f).
- (4) If the Chief Executive Officer fails to disclose any interest contemplated in subsection (1) or contravenes subsections (2) or (3), the [MEC] Board, after consulting the MEC, may declare the relevant actions null and void.
- (5) A failure as contemplated in subsection (4) constitutes a sufficient reason as contemplated in section 8(2).

#### **Amendment of section 11 of Act No. 10 of 2001**

9. Section 11 of the principal Act is hereby amended by the substitution for section 11 of the following section: 25

##### **“11. Staff of the Authority**

- (1) The Chief Executive Officer must, [with the concurrence of the MEC] in consultation with the Board, appoint persons to assist the Authority in the performance of its duties and exercise of its powers. 30
- (2) The staff of the Authority must—
  - (a) receive remuneration, allowances and other employment benefits; and
  - (b) be appointed on such terms and conditions of service and for such periods, as the [Chief Executive Officer] Board may, with the concurrence of the MEC, determine.” 35

#### **Repeal of section 12 of Act No. 10 of 2001**

10. Section 12 of the Principal Act is hereby repealed.

#### **Amendment of section 13 of Act No. 10 of 2001**

11. Section 13 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 40

“(1) The Chief Executive Officer may, with the concurrence of the [MEC] Board, and for the effective execution of the provisions of this Act, delegate a power conferred on him or her under this Act [, except as accounting authority,] to any member of staff.”

#### **Amendment of section 16 of Act No. 10 of 2001**

12. Section 16 of the principal Act is hereby amended by—

- (a) the substitution for subsections (1) and (2) of the following subsections:
  - “(1) The [Chief Executive Officer] Board is the accounting authority of the Authority subject to the provisions of the Public Finance Management Act. 50

(2) Treasury may, in exceptional circumstances, approve or instruct that **[another functionary]** an employee of the Authority be the accounting authority and may withdraw the approval or instruction at any time.”

(b) the substitution for subsection (7) of the following subsection: 5

“(7) If the accounting authority is unable to comply with any of the responsibilities determined for **[the Authority or accounting authority]** it in terms of the provisions of the Public Finance Management Act, **[he or she]** it must promptly report the inability to comply together with reasons, to the MEC and Treasury.” 10

### **Repeal of Chapter 3 of Act No. 10 of 2001**

13. Chapter 3 of the Principal Act is repealed.

### **Short title**

14. This Act is called the Gauteng Tourism Amendment Act, 2005.