

PROVINCE OF WESTERN CAPE

**PROVINCIAL DEVELOPMENT
COUNCIL LAW AMENDMENT
BILL**

(As amended by the Standing Committee on Governance)

(PREMIER)

[B 4B—2004]

PROVINSIE WES-KAAP

**WYSIGINGSWETSONTWERP OP
DIE WET OP DIE PROVINSIALE
ONTWIKKELINGSRAAD**

(Soos gewysig deur die Staande Komitee oor Regeringsake)

(PREMIER)

[W 4B—2004]

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.

AMENDMENT ACT

To amend the Provincial Development Council Law, 1996; to replace “Law” with “Act”; to provide for amendments to the definitions; to provide for a new form of composition of the Council; to redefine the functions of the Council; to provide for the appointment and responsibilities of a management committee to serve the Council; to provide for the appointment of a chief executive officer of the Council; to take cognisance of the requirements of the Public Finance Management Act, 1999; to repeal provisions requiring the Council to have a constitution; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Provincial Development Council Law, 1996, came into operation on 7 August 1996;

AND WHEREAS the purposes for which the Council was established have in large measure now been served;

AND WHEREAS the Provincial Government of the Western Cape, organised business, organised labour and civil society in the Western Cape signed a Framework Agreement on Growth and Development in the Western Cape at the conclusion of the Growth and Development Summit on 14 November 2003;

AND WHEREAS the Provincial Development Council is to be the platform for social dialogue in the Western Cape;

AND WHEREAS the Framework Agreement realigns the relationships between the four signatories;

AND WHEREAS the realignment referred to above requires the Law to be amended;

NOW THEREFORE BE IT ENACTED by the Provincial Parliament of the Western Cape as follows:

Substitution for “Law” in Law 5 of 1996

1. The Provincial Development Council Law, 1996 (hereafter referred to as the “principal Law”), is amended in the English text by the substitution for the word “Law”, wherever it appears, of the word “Act”.

Substitution of section 1 of Law 5 of 1996

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2. The following section is substituted for section 1 of the principal Law:

“Definitions

1. In this Law, unless the context otherwise indicates—

[“accounting officer” means a person referred to in sections 16 and 17 of the Western Cape Exchequer Law, 1994 (Law 4 of 1994); 10

“Constitution” means the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993);

“constitution” means the constitution of the Provincial Development Council;

“development planning” means a participatory process to integrate economic, sectoral, spatial, social, institutional, fiscal, environmental and other strategies to support the optimal allocation of scarce resources between various sectors and geographical areas, and across the population, in a manner that promotes sustainable growth and equity, with the emphasis on the empowerment of poor and marginalised communities and women; 15

“Director-General” means the Director-General: Provincial Administration: Western Cape;

“financial year” means the period extending from 1 April in any year to 31 March in the succeeding year;] 20

“Amendment Act” means the Provincial Development Council Law Amendment Act, 2004; 25

“chief executive officer” means the chief executive officer appointed in terms of section 8;

“civil society” means any community organisation or other organisation which is a non-governmental organisation operating or functioning in the Province of the Western Cape; 30

“Framework Agreement” means the agreement concluded by the social partners as a result of the Summit

“government” means government as constituted in terms of section 40(1) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996); 35

“integrated development [framework” means a plan in which economic, spatial, transport, institutional, administrative, fiscal, environmental and other strategies are integrated to strive after the optimal allocation of scarce resources in a particular geographical area] means 40

a participatory process to integrate economic, sectoral, spatial, social, institutional, fiscal, environmental and other strategies to support the optimal allocation of resources between various sectors and geographical areas, and across the population, in a manner that promotes sustainable growth and equity; 45

[“local authority” means any transitional metropolitan council, transitional metropolitan substructure, transitional local council, transitional rural or representative council and district council as established in terms of the Local Government Transition Act, 1993 (Act 209 of 1993); 50

“local development forum” means an RDP Forum or any other development forum, set up for the area or part of the area of a local authority, and which forum is recognised as prescribed;]

“management committee” means the management committee appointed in terms of section 6; 55

“municipality” means any municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

[“organised agriculture” means agriculture as represented by farmers’ and farm worker organisations;]
 “organised business” means business as represented by business associations organised on a provincial basis;
 “organised labour” means labour as represented by federations of trade unions or trade unions; 5
 [“organisations of development and community interest” means organisations representing development and community interests on a provincial basis;
 “organisations of environmental interest” means organisations representing environmental interests on a provincial basis;] 10
 “organs of state” means organs of the state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;
 “Premier” means the Premier of the province of the Western Cape [, acting in accordance with the Constitution]; 15
 [“prescribed” means prescribed by regulation;]
 “province” means the province of the Western Cape;
 “Provincial Development Council” means the Provincial Development Council established by section 2;
 [“RDP” means the Reconstruction and Development Programme adopted as policy by the Government of National Unity as outlined in the Reconstruction and Development Programme White Paper of 1994; 20
 “Regional Councils” means the Regional Development Councils established in terms of section 8; 25
 “responsible Member” means the Member of the Executive Council of the province responsible for Planning and matters related thereto;
 “statutory body” means any local government, board, fund, institution, company, corporation or other organisation established or constituted by or under any law in terms of which funding is done from the Provincial Revenue Account or of which the accounts are to be audited by the Auditor-General, and] 30
 “social partners” means government, organised business, organised labour and civil society; and
 “Summit” means the Provincial Growth and Development Summit of November 2003, which gave rise to the Framework Agreement signed by the social partners.”. 35
 [“this Law” includes any regulation and proclamation in terms of this Law.]

Substitution of section 2 of Law 5 of 1996 40

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

“Establishment and objective of [the] Provincial Development Council

2. (1) There is [hereby] established a juristic person for the province called the Provincial Development Council which is defined as a public entity in terms of section 1 of the Public Finance Management Act, 1999. 45
 (2) [The Provincial Development Council may consist of various chambers and specialist committees, as set out in its constitution.] The objective of the Provincial Development Council is to serve as the inclusive platform for social dialogue in the province in order to generally promote an approach that integrates considerations of sustainable development, participation in the economy and social equity in order to redress the historical legacy of the province.”. 50

Substitution of section 3 of Law 5 of 1996

4. The following sections are substituted for section 3 of the principal Law:

“3. (1) The Provincial Development Council consists of 32 members appointed by the Premier on the following basis and with regard to the Framework Agreement and any amendments thereto:

- (a) 8 representatives of government;
- (b) 8 representatives of organised labour;
- (c) 8 representatives of civil society; and
- (d) 8 representatives of organised business.

(2) (a) The government representatives are appointed within a framework determined by the Premier which takes into account cooperative and integrated governance.

(b) The Premier, by notice in the *Provincial Gazette* and such other media as is deemed advisable, must call for nominations for appointment as representatives contemplated by paragraphs (b), (c), and (d) of subsection (1).

(3) The notice contemplated by subsection (2)(b) must specify the date by which nominations may be made, which date must not be less than 28 days after the date of publication of the notice.

(4) Nominations contemplated by subsection (3) must—

- (i) contain the nominator’s reasons for the nomination;
- (ii) indicate which social partner it is intended that the nominee (if appointed) will represent;
- (iii) be accompanied by the nominee’s curriculum vitae and a declaration signed by the nominee of his or her willingness to serve on the Provincial Development Council.

(5) Members of the Provincial Development Council are appointed for a period of three years but in exceptional circumstances may be appointed for a lesser period.

(6) Members of the Provincial Development Council may be remunerated for their services as determined by the Premier, and may be reimbursed for direct expenses within a framework determined by the Premier.

(7) The Provincial Development Council may also from time to time invite specialists, including representatives of academic institutions, to advise the Provincial Development Council.

(8) Representation on the Provincial Development Council must reflect the demographic and geographic profile of the province.

(9) Meetings of the Provincial Development Council must be open to the public.

Chairperson and vice-chairperson

3A. (1) The first meeting of the Provincial Development Council after the appointment of members in terms of section 3(1)(as amended by the Amendment Act) must be presided over by the chief executive officer until the appointment of the chairperson and the vice-chairperson as contemplated in subsection (2).

(2) At the first meeting referred to in subsection (1) the chief executive officer must attend to a drawing of lots by the four social partners to establish the order in which the partners will appoint a chairperson and a vice-chairperson, each to hold office for a period of nine months.

Vacation of office of member

3B.(1) A member of the Provincial Development Council ceases to hold office if that member—

- (a) dies;
- (b) resigns;

- (c) is convicted of an offence and sentenced to imprisonment without the option of a fine: Provided that no-one is regarded as having been sentenced until an appeal against the conviction or sentence has been finally determined;
- (d) has been absent from two consecutive meetings of the Provincial Development Council without the consent of the chairperson; or
- (e) becomes an employee of the Provincial Development Council.
- (2) The Premier may remove a member of the Provincial Development Council on grounds of misconduct, incapacity or incompetence with due consideration of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).
- (3) In the event of a vacancy occurring as contemplated by subsection (1), the Premier must appoint a person as a member of the Provincial Development Council to represent the relevant partner for the unexpired portion of the previous member's term of office: Provided that, in the case of a member whose office becomes vacant being a representative contemplated by section 3(1)(b), (c) or (d), the Premier must comply with section 3(2)(b); provided further that, if the unexpired portion of the term of office is less than six months, the preceding provision of this subsection does not apply."

Substitution of section 4 of Law 5 of 1996

5. The following section is substituted for section 4 of the principal Law:

“Functions and powers of Provincial Development Council

4. The Provincial Development Council—

- (a) must—
- (i) seek to enhance communication, cooperation and coordination between government and its social partners in achieving economic and social development objectives, and the social partners, including government, are under an obligation to employ the Provincial Development Council for this purpose;
 - (ii) facilitate the conclusion of agreements on the basis of consensus of the social partners;
 - (iii) generally strive toward the achievement of greater effectiveness on the part of the organs of state and government's social partners in the achievement of the objectives of integrated and sustainable development;
 - (iv) facilitate the post-Summit process through facilitating sector strategies interactively with other development planning processes affecting the province; and
 - (v) undertake such additional tasks as may be referred to it by the Premier; and
- (b) may—
- (i) facilitate debate, consultation and agreement on significant matters of policy and legislation amongst the social partners and the participation of the social partners in policy and proposed legislation through the normal parliamentary processes;
 - (ii) facilitate the enhancement of the capacity of the social partners to participate in integrated development planning processes;
 - (iii) commission applied research into social, environmental and economic policy issues significantly affecting the Western Cape in order to guide discussions and share information between the parties: Provided that such research does not duplicate what is already being done by government and avoids duplication or fruitless expenditure;
 - (iv) if requested by a municipality, assist in facilitating consensus within that municipality regarding socioeconomic developmental issues and between that municipality and other municipalities regarding those issues;

- (v) maintain open and ongoing communication with organs of state and any other forums and non-governmental organisations engaged in the formulation and implementation of policy; and
- (vi) from time to time establish specialist committees, each consisting of five members from each of the four social partners, to cover the focus areas designated in the Framework Agreement: Provided that any specialist committee may invite specialists as is contemplated by section 3(7); provided further that a specialist committee must on a basis of consensus determine the procedure for its meetings but all four social partners must be represented before a meeting is quorate.”.

Substitution of section 5 of Law 5 of 1996

6. The following section is substituted for section 5 of the principal Law:

“Meetings and decisions of Provincial Development Council

- 5. (1)** The Provincial Development Council may meet whenever considered necessary but must meet at least four times between 1 January and 31 December in any year.
- (2) The quorum for a meeting of the Provincial Development Council is 50% of the members plus one, but at all times each of the four social partners must be represented by no less than four representatives of its members.
- (3) When the Provincial Development Council takes a resolution in the exercise of any function or the performance of any duty contemplated by section 4, it must do so by seeking to achieve consensus: Provided that if consensus cannot be achieved the Provincial Development Council may table a document that reflects the various views of the members on the recommendation, advice or proposal, as the case may be.
- (4) If the chairperson is absent from a meeting the vice-chairperson must preside at the meeting, and if both the chairperson and the vice-chairperson are absent from a meeting the members must select from among those present a member to preside over the meeting.”

Substitution of section 6 of Law 5 of 1996

7. The following section is substituted for section 6 of the principal Law:

“Management committee of Provincial Development Council

- 6. (1)** The Provincial Development Council must, for the purposes of its day-to-day functioning, appoint from among its members a management committee of five: Provided that the chairperson of the Provincial Development Council is automatically the chairperson of the management committee; provided further that the other four members of the management committee must be so selected that each of the four social partners referred to in section 3(1) has at least one representative on the management committee.
- (2) The management committee is accountable to the Provincial Development Council.
- (3) The chairperson of the management committee decides the dates, times and places for its meetings but the committee must meet at least once each month.
- (4) (a) All four social partners must be represented before a meeting of the management committee may proceed.
- (b) Decisions of the management committee must be on a basis of consensus.

- (5) The management committee operates within the mandates and delegations which are handed down to it by the Provincial Development Council, must include at least the authority to—
- (i) perform such tasks, duties and activities consistent with the role and functions of the Provincial Development Council as may be referred to it by the Provincial Development Council from time to time; 5
 - (ii) plan, organise and control the administration of the Provincial Development Council and, when necessary, procure the dedicated professional and administrative support for the Provincial Development Council to fulfil its role and perform its functions; 10
 - (iii) prepare the agenda of the Provincial Development Council’s meetings; and
 - (iv) monitor and coordinate the implementation of decisions of the Provincial Development Council and seek consensus between the social partners in respect of critical short-term corrective adjustments and refinements to decisions reached by the Provincial Development Council subject to the requirement of *ex post facto* ratification by the Provincial Development Council.”. 15

Substitution of section 7 of Law 5 of 1996

8. The following section is substituted for section 7 of the principal Law: 20

“Chief executive officer and personnel of Provincial Development Council

7. (1) The Provincial Development Council after an open and transparent advertising process, must appoint a fit and proper person with knowledge of and experience in socioeconomic and sustainable development and the facilitation of consensus as its chief executive officer. 25
- (2) The chief executive officer is appointed and remunerated on terms and conditions determined by the Provincial Development Council in concurrence with the Premier and the Provincial Minister responsible for finance in the province. 30
- (3) The chief executive officer through the management committee, is accountable to the Provincial Development Council.
- (4) The chief executive officer is responsible for —
- (a) providing administrative and management support for the Provincial Development Council and the management committee; 35
 - (b) the keeping of minutes of all meetings of the Provincial Development Council and the management committee, which he or she must attend;
 - (c) the circulation of the minutes referred to in paragraph (b), once approved by a subsequent meeting, to members of the Provincial Development Council; 40
 - (d) compiling the agendas for meetings of the management committee;
 - (e) ensuring the efficient and proper performance of duties by other personnel of the Provincial Development Council; and
 - (f) monitoring and reporting on the implementation of agreements concluded by the Provincial Development Council. 45
- (5) The chief executive officer may, in writing, delegate any power or function assigned to him or her by this Act, the Provincial Development Council or the management committee to a person appointed in terms of subsection (6).

(6) The Provincial Development Council in terms of a framework determined by the Premier, which takes into consideration appointments and remuneration as determined under the Public Service Act, 1994, may appoint and remunerate such other personnel as are considered necessary.”.

Substitution of section 8 of Law 5 of 1996

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9. The following section is substituted for section 8 of the principal Law:

“Funding and financial matters

8. (1) The Provincial Development Council will be funded by appropriations made by the Provincial Parliament.

(2) (a) In addition to the funding contemplated by subsection (1), the Provincial Development Council is authorised to recover costs for services rendered to a municipality, provincial or national department or any other institution at that municipality’s, department’s or institution’s request; but if special circumstances exist the Provincial Development Council may render services free of charge.

(b) The Provincial Development Council, subject to any applicable provisions of the Public Finance Management Act, 1999 (Act 1 of 1999) and regulations in terms thereof, may accept donations from any of the social partners.

(3) All aspects of the financial affairs of the Provincial Development Council (including the financial responsibility of the chief executive officer) are regulated by the Public Finance Management Act, 1999, and any regulations or directives issued in terms thereof.

(4) The accounts of the Provincial Development Council must be audited by the Auditor-General.”.

Substitution of section 9 of Law 5 of 1996

10. The following section is substituted for section 9 of the principal Law:

“Cost-effectiveness of Provincial Development Council

9. (1) It is the responsibility of the Provincial Development Council to ensure that it functions on a cost-effective basis.

(2) For the purposes of ensuring compliance with the responsibility contemplated by subsection (1) and the funding contemplated by section 8(1), the Provincial Development Council must—

(a) provide the Premier and the Provincial Parliament on an annual basis with a strategic plan prior to the submission of budgets;

(b) conclude service level agreements with the provincial government; and

(c) conclude service level agreements with the municipalities, departments and other institutions contemplated in section 8(2).”

Substitution of section 10 of Law 5 of 1996

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11. The following section is substituted for section 10.

“Transitional measures

10. (1) Members of the Provincial Development Council in office on the date on which the Amendment Act comes into operation, remain in office until the day immediately before the day on which members are appointed in terms of section 3(1), as amended by the Amendment Act.

(2) The Premier, within 14 days of the date on which the Amendment Act comes into operation, must publish the notice contemplated by section 3(2), as amended by the Amendment Act.

(3) The Premier, within 28 days of the date specified in the notice required in terms of subsection (2), must appoint the members of the Provincial Development Council.

(4) Any specialist committee in existence on the date on which the Amendment Act comes into operation is abolished on that date.

(5) Subject to subsection (6), any person employed by the Provincial Development Council on the date on which the Amendment Act comes into operation remains so employed.

(6) The Provincial Development Council as reconstructed in terms of the Amendment Act, within 12 months of such reconstruction, must restructure its staff taking into account—

(a) the need for effective performance; and

(b) the provisions of the Labour Relations Act, 1995 (Act 66 of 1995).”.

Repeal of sections 11 and 12 of Law 5 of 1996

12. Sections 11 and 12 of the principal Law are repealed.

Substitution of long title of Law 5 of 1996

13. The following long title is substituted for the long title of the principal Law:

“To provide for the establishment of a Provincial Development Council to serve as the platform for social dialogue in the province of the Western Cape; to provide for the appointment of members of that Council; to provide for the functioning of that Council; to provide for the appointment of a management committee for that Council; to provide for the powers and functions of that Council; to provide for the appointment of a chief executive officer and other personnel of that Council; to provide for the funding and financial control of that Council; to provide for transitional measures for that Council; and to provide for matters connected therewith.”.

Short title and commencement

14. This Act is called the Provincial Development Council Law Amendment Act, 2004, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

EXPLANATORY MEMORANDUM

WESTERN CAPE PROVINCIAL DEVELOPMENT LAW AMENDMENT BILL

Introduction

The aim of the Provincial Development Council Law Amendment Bill is to amend the outdated Provincial Development Council Law of 1996 (“the principal Law”), to replace “Law” with “Act”, to provide for a new form of composition of the Provincial Development Council (PDC), to redefine the functions of the PDC to provide for the appointment and responsibilities of a management committee to serve the PDC, to provide for the appointment of a chief executive officer of the PDC, to bring the PDC into line with the Public Finance Management Act, 1999, to repeal provisions requiring the PDC to have a constitution and to reflect the Framework Agreement on Growth and Development in the Western Cape, signed at the 2003 Provincial Growth and Development Summit. The Bill makes provision for the PDC to be the provincial platform for social dialogue between the four social partners, i.e. government, organized labour, organized business and civil society, and provides for related matters .

Clause One

This clause provides for the substitution for the word “Law” of the word “Act” in the English text.

Clause Two

This clause provides for an amendment of section 1 of the principal law in order to delete redundant definitions and incorporate certain new ones.

Clause Three

This clause amends section 2 of the principal Law regarding the establishment and objectives of the Provincial Development Council. That is, “to serve as the platform for social dialogue in the province in order to generally promote an approach that integrates considerations of sustainable development, participation in the economy and social equity in order to redress the historical legacy of the province.”.

Clause Four

This clause substitutes a new section for section 3 in the principal Law and inserts two new sections i.e. 3A and 3B. The new section 3 deals with the composition of the Provincial Development Council (now 32 members), the process to be followed for the appointment of members, the demographic and geographic representation on the Council, the remuneration of members and the requirement that meetings be open to the public. The new section 3A provides for rotational appointment of a chairperson and vice-chairperson.

The new section 3B provides for the vacating of office by members and the filling of vacancies.

Clause Five

This clause substitutes an entirely new section for section 4 of the principal Law. It deals with powers and functions which the PDC must or may exercise and perform. In providing a platform for social dialogue the PDC must seek to enhance communication and coordination between government and its social partners in achieving economic and social development and facilitate and assist in seeking consensus amongst the social partners. The PDC may also assist municipalities to achieve consensus in these areas. The PDC may establish up to three specialist committees.

Clause Six

This clause substitutes an entirely new section for section 5 of the principal Law. It provides for the procedures and processes for meetings of, and taking of resolutions by, the PDC.

Clause Seven

This clause substitutes a new section for section 6 of the principal Law. It provides for the establishment and the functioning of a management committee of the PDC to assist with the day- to- day running of the PDC.

Clause Eight

This clause provides for a new section 7 of the principal Law. It prescribes the appointment and responsibilities of the chief executive officer and personnel of the PDC.

Clause Nine

This clause provides for a new section 8 of the principal Law. It provides for the funding and concomitant financial matters of the PDC, bringing them in line with the Public Finance Management Act, 1999.

Clause Ten

This clause provides for an entirely new section 9 of the principal Law. It prescribes a requirement of “cost-effectiveness of the PDC”. Amongst others, this new section requires that the PDC must provide the Premier and the provincial government on an annual basis with a strategic plan prior to the submission of budgets and conclude Service Level Agreements with the provincial government, municipalities and other institutions contemplated in clause nine.

Clause Eleven

This clause provides for a new section 10 in the principal Law. It makes provision for certain institutional transitional matters required as a consequence of the enactment envisaged by the Bill.

Clause Twelve

This clause provides for the repeal of sections 11 and 12 of the principal Law which as a result of the current amendment have become redundant.

Clause Thirteen

This clause substitutes a new long title for the old long title of the Law to take account of the amendments listed above.

Clause Fourteen

This clause provides for the short title and commencement of the Act. To this end, the short title is the Provincial Development Council Law Amendment Act, 2004. It is to come into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.