

PROVINCE OF WESTERN CAPE

**WESTERN CAPE
PETITIONS BILL**

(As introduced)

(SPEAKER)

[B 7—2005]

IPHONDO LENTSHONA KOLONI

**UMTHETHO OSAYILWAYO
WEZIKHALAZO WENTSHONA
KOLONI**

(Njengoko wazisiwe)

(USOMLOMO)

[B 7—2005]

BILL

To provide for the right to petition the Provincial Parliament; to regulate the submission and consideration of petitions; and to provide for incidental matters.

BE IT ENACTED by the Provincial Parliament of the Province of the Western Cape, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
 - “**Committee**” means the standing committee of the Provincial Parliament appointed to deal with public petitions; 5
 - “**National Constitution**” means the Constitution of the Republic of South Africa, 1996;
 - “**Petitioner**” means a person who has submitted a petition to the Provincial Parliament; 10
 - “**Provincial Executive**” means the provincial executive authority referred to in section 35 of the Constitution of the Western Cape;
 - “**Provincial Parliament**” means the Provincial Parliament of the Province of the Western Cape;
 - “**Secretary**” means the Secretary to the Provincial Parliament; 15
 - “**Speaker**” means the Speaker of the Provincial Parliament;
 - “**Standing Rules**” means the rules made by the Provincial Parliament in terms of section 23(3)(b) of the Constitution of the Western Cape;
 - “**this Act**” includes the regulations made under section 8.

Right to petition 20

2. (1) Any person, group of persons, institution or association has the right to submit a petition to the Provincial Parliament.
 - (2) The right to petition must be exercised in accordance with this Act.
 - (3) Subsection (1) does not apply to a member of the national executive authority or of the Provincial Executive. 25
 - (4) A member of the Provincial Parliament may not submit a petition to the Parliament requesting redress for the member.

Formal requirements for petitions

3. (1) A petition must be—
 - (a) in the form prescribed by regulation; 30
 - (b) in one of the official languages of the Province;
 - (c) signed by every Petitioner or, if so requested or authorised by the Petitioner, by another person on behalf of the Petitioner; and
 - (d) lodged with the Secretary.
- (2) A petition must state— 35
 - (a) the names and address of every Petitioner;
 - (b) in whose interest the Petitioner is acting; and

- (c) what avenues, if any, the Petitioner has used to try and resolve the matter concerned.

Contents of petitions

4. (1) Subject to subsection (2), a petition may consist of any request, complaint, representation or submission relating to the functions of the Provincial Parliament or the Provincial Executive, including any matter— 5
- (a) on which the Provincial Parliament can pass legislation;
 - (b) falling within the area of responsibility of any member of the Provincial Executive;
 - (c) assigned to a member of the Provincial Executive in terms of section 99 of the National Constitution; 10
 - (d) relating to the conduct of a member of the Provincial Executive or any of its employees or agents; or
 - (e) relating to provincial supervision and monitoring of local government in terms of section 49 and Chapter 5 of the Constitution of the Western Cape. 15
- (2) A petition is not acceptable if it—
- (a) falls outside the scope of the matters referred to in subsection (1);
 - (b) interferes with the judicial authority of the Republic;
 - (c) concerns a matter in respect of which legal proceedings are pending; or
 - (d) concerns a matter that is being investigated by a commission of inquiry appointed by the President of the Republic or the Premier of the Province. 20

Consideration of petitions by Committee

5. (1) All petitions received by the Provincial Parliament must be referred to the Committee.
- (2) The Committee must— 25
- (a) protect and promote the rights of Petitioners provided for in this Act; and
 - (b) subject to subsections (5) and (6), consider every petition referred to it.
- (3) The Committee must report to the Provincial Parliament on each petition. In its report, the Committee may make any appropriate recommendation, including that— 30
- (a) in so far as a matter falls within the competence of the Provincial Parliament, the Provincial Parliament itself should take steps to address the concerns of the Petitioner;
 - (b) the matter be referred to another committee of the Provincial Parliament;
 - (c) the matter be referred to the Provincial Executive or to a municipal council in the Province for attention; 35
 - (d) the matter be referred to any other body or authority, including the National Prosecuting Authority or an institution established by Chapter 9 of the National Constitution;
 - (e) a recommendation be made to a person or body with a view to resolving the matter forming the subject of the petition; or 40
 - (f) no further steps be taken regarding the petition.
- (4) The Chairperson of the Committee must ensure that every Petitioner is timeously and, where applicable, regularly informed of developments regarding the petition concerned, including proceedings of the Committee on the petition and any relevant resolution of the Provincial Parliament. 45
- (5) The Committee must reject a petition referred to in section 4(2).
- (6) The Committee may reject a petition if—
- (a) the petition does not comply fully with section 3(1) or (2);
 - (b) the petition contains offensive language;
 - (c) the petition reflects on the proceedings of the Provincial Parliament or any of its committees or otherwise offends against the Standing Rules or the practice of the Provincial Parliament; or 50
 - (d) the Petitioner has not exhausted all other available remedies, including, where applicable, legal proceedings.

- (7) When the Committee rejects a petition in terms of subsection (5) or (6)—
- (a) the Committee must provide reasons for its decision; and
 - (b) the Secretary must inform the Petitioner of the rejection of the petition and the reasons therefor.
- (8) The procedure of the Committee is as prescribed by the Standing Rules. 5

Reports by Provincial Executive

6. When the Provincial Parliament has referred a matter to the Provincial Executive as contemplated in section 5(3)(c), the Premier or the responsible Minister must, within four weeks from the date of the relevant resolution, table a report in the Provincial Parliament on the position of the Provincial Executive regarding the matter and any steps taken or to be taken to address the concerns of the Petitioner. 10

Administrative support

7. The Secretary must ensure that adequate administrative assistance is provided to—
- (a) prospective petitioners to enable them to submit petitions complying with the requirements of this Act; and 15
 - (b) the Committee to enable it to perform its functions.

Regulations

8. (1) The Speaker, after consultation with the Committee—
- (a) must make regulations prescribing the petition form referred to in section 3(1)(a); and 20
 - (b) may make regulations, not inconsistent with this Act or the Standing Rules, regarding—
 - (i) the process and procedures for the submission of and dealing with petitions; and
 - (ii) in general, any matter necessary or convenient to be prescribed in order to achieve or promote the objects of this Act. 25
- (2) The Secretary must—
- (a) as soon as practicable after regulations have been made under subsection (1), publish the regulations in the *Provincial Gazette*;
 - (b) whenever the regulations are amended, prepare a consolidated version; and 30
 - (c) provide a copy of the regulations or the consolidated version thereof, as the case may be, together with a copy of any relevant provisions of the Standing Rules relating to petitions, to any member of the public requesting such a copy.

Short title and commencement 35

9. This Act is called the Western Cape Petitions Act, 2005, and comes into effect on a date set by the Speaker by proclamation in the *Provincial Gazette*.

MEMORANDUM ON THE OBJECTS OF THE WESTERN CAPE PETITIONS BILL, 2005

Introduction

1. A well-established principle of our parliamentary common law is that any member of the public has the right to petition Parliament, amongst others for the alteration of the general law, the reconsideration of a general administrative decision, or redress of local or personal grievances.
2. With respect to the Provincial Parliament, this right is acknowledged by implication in the provisions of section 115(d) of the Constitution of the Republic of South Africa, 1996 (the National Constitution), and section 25(d) of the Constitution of the Western Cape. Those provisions entitle the Provincial Parliament to “receive petitions, representations or submissions from any interested persons or institution”. Furthermore, section 23(4)(f) of the Constitution of the Western Cape requires the Provincial Parliament to provide in its rules and orders for “the receipt of petitions, representations, or submissions from any interested person or institution”. Rules 184 to 190 of the Standing Rules of the Provincial Parliament regulate certain aspects concerning such petitions.
3. Section 17 of the National Constitution provides for a general right to “present petitions”. However, there is no provision in either the National Constitution or the Constitution of the Western Cape specifically authorising members of the public to petition the legislative authority.

Main object of Bill

4. The main object of the Bill is to give more meaningful effect to the abovementioned constitutional provisions by spelling out the right of members of the public to submit petitions to the Provincial Parliament. It is hoped that the legislation will facilitate public participation in the activities of the Provincial Parliament as envisaged by section 28(3) of the Constitution of the Western Cape.

Summary of respective provisions of Bill

5. In summary the Bill provides as follows:

Clause 1 contains definitions.

Clause 2 sets out the right of members of the public to petition the Provincial Parliament.

Clause 3 lists the formal requirements for petitions.

Clause 4 provides guidance relating to the contents and subject matter of petitions.

Clause 5 makes provision for petitions to be considered by a parliamentary standing committee charged specifically with that task. The Committee is authorised to reject petitions which do not comply with certain specified criteria. The Committee will be required to report to the House with respect to each petition, thereby leaving it for the House to take the final decision as to appropriate action. The Committee will function in accordance with provisions of the Standing Rules relating to committees generally, except in so far as special rules might be made for this Committee.

Clause 6 deals with the case where the House refers a matter concerning a petition to the executive authority of the Province. The Executive is required to table a report on the matter within four weeks after the referral.

Clause 7 seeks to ensure administrative support for prospective petitioners as well as the relevant committee.

Clause 8 authorises the Speaker to make certain regulations relating to petitions.

Clause 9 contains the short title. Provision is also made that the Act will come into operation on a date determined by the Speaker.

Financial implications

6. Depending on the number of petitions received, there could be some minor additional expenses arising from the employment of support staff.