

ACT

To provide for the right to submit a petition to the Legislature of the Province of the Free State; to provide for the general principles and procedures for the submission of a petition to the Legislature; to provide for the consideration of a petition by committees of the Legislature; and to provide for incidental matters.

BE IT ENACTED by the Provincial Legislature of the Free State, as follows:-

(English text assented to and signed by the Premier.)

Definitions

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1. In this Act, unless the context otherwise indicates -

“**administrative support service**” means employees of the Legislature assigned by the Secretary for purposes of the effective implementation and execution of this Act; 10

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

“**Committee**” means a Portfolio Committee of the Legislature, and includes an ad hoc Committee established in terms of the Standing Rules and Orders; 15

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**Executive Council**” means the executive council of the Province contemplated in section 132 of the Constitution; 20

“**Legislature**” means the provincial legislature of the Province contemplated in section 104 of the Constitution; 25

“**municipal council**” means the local government authority in the Province;

“**petition**” means a complaint or request or a representation or a submission addressed by a petitioner to the Committee in terms of this Act; 30

“**petitioner**” means a person who submits a petition in terms of this Act, and includes a natural or juristic person;

“**prescribed**” means prescribed by regulation in terms of section 16; 35

“**Province**” means the Province of the Free State established in terms of section 103 of the Constitution;

“**relevant authority**” means a provincial department, municipal council, or other government institution over which the Legislature exercises oversight;

“**Secretary**” means the Secretary to the Legislature, or any official designated by the Secretary in writing;

“**Speaker**” means the Speaker of the Legislature elected in terms of section 111 of the Constitution;

“**Standing Rules and Orders**” means the rules and orders made for the conduct of business of the Legislature in terms of section 116 of the Constitution;

“**this Act**” includes the regulations promulgated under this Act.

Right to petition

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

(b) The administrative support service must render assistance to a prospective petitioner who wishes to submit a petition to the Legislature.

General principles

3. (1) A petitioner must submit a petition in writing in any of the official languages of the Republic of South Africa.

(2) The Legislature must -

(a) respect, protect and promote the rights of a petitioner provided for in this Act;

(b) take appropriate steps to promote and facilitate participation by the citizens of the Province in the process of governance in the Province, particularly persons previously disadvantaged by unfair discrimination of whatever nature; and

(c) enhance democracy by exercising maximum accountability and transparency in their consideration of petitions.

(3) The Legislature must promote and facilitate a fair and equitable process of considering petitions submitted to the Legislature in terms of this Act.

Petitions

4. (1) A petition may be -
- (a) a single petition, which is an individual submission from a single petitioner, concerning a particular complaint or request; 5
 - (b) an association petition, which is an individual submission from an association or single petitioner mandated by an association to submit that petition in writing, concerning a particular complaint or request; 10
 - (c) a collective petition, which is a collection of signatures from a number of petitioners, concerning a particular complaint or request; 15
 - (d) a mass or group petition, which is made up of individual or group submissions from a number of petitioners, concerning the same or substantially similar complaints or requests. 15
- (2) A petition may be submitted by a person acting - 20
- (a) in his or her own interest;
 - (b) in the interest of another person who is not in a position for whatever reason to submit a petition in his, her or its own name; 25
 - (c) as a member of or in the interest of a group or section of a community; or
 - (d) in the public interest. 30
- (3) A petition may subject to subsection (4) address any matter -
- (a) within the legislative authority of the Province contemplated in the Constitution; 35
 - (b) within the executive authority of the Province contemplated in the Constitution;
 - (c) assigned to a member of the Executive Council in terms of the Constitution; or 40
 - (d) relating to the provincial supervision of local government contemplated in the Constitution.

- (4) The Legislature must not consider a petition -
- (a) falling outside the scope of matters contemplated in subsection (3);
 - (b) concerning a matter pending in a court of law or other tribunal or forum contemplated in the Constitution; 5
 - (c) in connection with the conviction and sentencing by a criminal court of law of a person to a period of imprisonment; or 10
 - (d) addressing a matter, which falls within the scope of a commission of inquiry established in terms of section 127(2) (e) of the Constitution.
- (5) The Legislature may not consider a petition which - 15
- (a) is illegible;
 - (b) does not state the correct name and contact details of the petitioner and, where applicable, the name of the association or group on whose behalf the petition has been submitted; 20
 - (c) has not been signed by the petitioner, except in the case of a petitioner who is unable to write and -
 - (i) who has made a mark on the petition as a symbol of his or her authority to submit the petition; and 25
 - (ii) that mark was made in the presence of two witnesses who are able to write and who by signing that petition certify that the mark is that of the petitioner; 30
 - (d) address a matter previously considered by the Committee except if that petition contains new information that may materially impact on the outcome of the consideration of the matter; 35
 - (e) contains defamatory statements or improper language;
 - (f) if applicable, addresses a matter that the petitioner has not yet brought to the attention of the relevant authority, or if the petitioner has brought it to the attention of the relevant authority, the relevant authority has not been afforded reasonable time to consider the matter. 40

Submission of petition

5. (1) The Speaker must, subject to this Act and the Standing Rules and Orders, consider every petition submitted to him or her for approval. 5
- (2) If the Legislature is sitting, the Legislature, by way of resolution, refers a petition to the relevant Committee.
- (3) If the Legislature is not sitting, the Speaker refers a petition to the relevant Committee in accordance with the provisions of the Standing Rules and Orders. 10

Functions of Committee

6. The Committee must - 15
- (a) subject to this Act, consider every petition referred to it with a view to settling the matter to the satisfaction of the petitioner and report to the Legislature; 20
- (b) before it considers a petition, record and reduce to writing oral submission or evidence of a petitioner given in terms of section 7(a);
- (c) require the person or body to report to the Committee in writing on the steps taken by that person or body to address the complaint, request, recommendation or instruction by the Committee, as the case may be; 25
- (d) if it refuses to consider a petition in terms of section 4(3), (4) and (5) or because it has not been submitted in accordance with this Act, report that fact to the Legislature; 30
- (e) as determined by the Legislature, report to the Legislature on the petitions referred to it and all its activities in respect thereof, including:
- (i) the responsiveness, efficiency and timeousness with which petitions were dealt with; and 35
- (ii) the efficacy of the petition process and procedures; and
- (f) instruct the administrative support service to inform a petitioner timeously – 40
- (i) from time to time, of progress in respect of the consideration of a petition;

- (ii) if the petitioner has been invited by the Committee to make oral submission or call a witness, of the date, time and venue the petition is to be considered and that the petitioner may attend that sitting of the Committee; and 5
- (iii) of the fact that the petitioner has access to the petition file at all reasonable times as prescribed;
- (g) where applicable, recommend to the Legislature other appropriate remedies available to the petitioner. 10

Powers of Committee

7. The Committee may – 15
- (a) invite a petitioner to -
 - (i) supplement his or her petition with additional oral or written submissions; 20
 - (ii) call a witness to present oral or written evidence to the Committee;
 - (b) invite public submissions from interested parties on a petition under consideration; 25
 - (c) make a recommendation to the Legislature with a view to settling the request or complaint contained in the petition to the satisfaction of the petitioner;
 - (d) make a recommendation to the Legislature in respect of the general approach to be followed in future in settling a request or complaint; 30
 - (e) if requested to do so by a petitioner, resolve a dispute or complaint, reverse an Act, rectify an omission, regarding matters other than those prescribed by legislation by means of mediation or negotiation; 35
 - (f) make a recommendation to the Legislature to refer the petition to another committee of the Legislature;
 - (g) conclude its consideration of a petition and report to the Legislature, if it resolves that no steps, or no further steps, as the case may be, can be taken to settle the matter to the satisfaction of the petitioner; 40

- (h) if the complaint or request in the petition has since its submission been settled to the satisfaction of the petitioner, conclude its consideration of a petition and report that fact to the Legislature;
- (i) subject to this Act, appoint a subcommittee in accordance with the Standing Rules and Orders to perform and exercise any of the functions or powers of the Committee. 5

Procedure for consideration of petition

- 8. The procedure for the consideration of a petition is as prescribed in the regulations and in accordance with the Standing Rules and Orders 10

Sitting of Committee

- 9. (1) The Committee may for purposes of hearing evidence and considering a petition sit at a date, time and place in the Province determined by the Committee in accordance with the Standing Rules and Orders. 15
- (2) The Chairperson must give notice of a sitting of the Committee in accordance with the Standing Rules and Orders. 20
- (3) The Chairperson must instruct the administrative support service to timeously - 30
 - (a) ensure that subpoenas for witnesses have been properly issued and served as prescribed;
 - (b) inform the petitioner in writing of any matter that the petitioner is entitled to be informed of in terms of this Act, any other law or the Standing Rules and Orders; 35
 - (c) if necessary, ensure that the contents of a petition file are translated into a working language of the Committee; 40
 - (d) perform any additional duty, which will enable the Committee to properly consider a petition and exercise its other functions in terms of this Act and the Standing Rules and Orders.
- (4) Evidence presented before the Committee must be heard in public unless it is - 45
 - (a) in the interests of justice; or
 - (b) in the interests of the safety of the petitioner or a witness. 50

- (5) The administrative support service must provide the Chairperson with a list of petitions which have not been finalized by the Committee, for tabling at each meeting of the Committee.

Accountability of Committee 5

10. (1) The Committee must report to the Legislature as contemplated in section 6.
- (2) A debate on an issue raised in a report of the Committee to the Legislature must take place if more than three members of the Legislature so demand. 10
- (3) The Legislature may refer any matter contained in a report submitted to the Legislature by the Committee back to the Committee for reconsideration.
- (4) A member of the Legislature has access to the petition file at any reasonable time. 15
- (5) The Legislature may whilst the Committee is considering a petition only conduct an interpellation in respect of that petition to the process of considering the petition and not in respect of the merits thereof. 20
- (6) A member of the Legislature may whilst the Committee is considering a petition only put a question in respect of that petition relating to the process of considering the petition and not in respect of the merits thereof. 25

Witnesses and material of evidence

11. (1) For the purpose of ascertaining a matter relating to the subject of its investigation, the Committee may, subject to the provisions of the Powers, Privileges and Immunities of the Provincial Legislature Act, 1996 (Act No. 3 of 1996)- 30
- (i) summon a person to attend a sitting of the Committee, in order to give evidence, or produce any book, document, object or other material of evidence if the Committee requires it; or 35
- (ii) subpoena a person to attend a sitting of the Committee, as a witness, in order to give evidence, or produce any book, document, object or other material of evidence, and to appear before the Committee at a time and place specified in the subpoena. 40
- (2) A person appearing before the Committee to give oral evidence must, before giving that evidence, take an oath or make an affirmation, administered by the Chairperson or any other person authorized by him or her to do so, to only speak the truth. 45

(3) Subject to the Speaker's approval, a person who has been subpoenaed to attend a sitting of the Committee as a witness, or who has given evidence before the Committee, is entitled to the witness fees payable to a witness giving evidence at a criminal trial in a High Court of the Republic.

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(4) A person appearing before the Committee to give oral evidence may be assisted by a representative of his or her choice.

Retention of materials of evidence

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12. (1) The Committee must make a copy or reproduction in any format of materials of evidence submitted to it.

(2) The Committee must retain such copy or reproduction for an indefinite period after conclusion of the consideration of a petition.

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(3) The administrative support service must include the copy or reproduction contemplated in subsection (1) in the particular petition file.

Offences

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13. (1) A person properly subpoenaed in terms of section 11 who without sufficient cause -

(a) fails to appear before the Committee at the date and venue stipulated in the subpoena;

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(b) fails to remain in attendance at the sitting of the Committee until the Chairperson excuses him or her from further attendance;

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(c) refuses or fails to take an oath or make an affirmation contemplated in section 11(2) when called upon by the Chairperson to do so;

(d) refuses or fails to produce any book, document, object or other material of evidence in his or her possession or under his or her control which he or she has been instructed to produce,

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is guilty of an offence.

(2) A person properly subpoenaed in terms of section 11 who after having taken an oath or made an affirmation -

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(a) fails to answer fully or truthfully any question lawfully put to him or her; or

- (b) otherwise knowingly gives false evidence,
is guilty of an offence.
- (3) A person – 5
- (a) who threatens, obstructs or unduly influences a person properly subpoenaed in terms of section 11 to -
- (i) refuse or fail to give oral evidence before the Committee; 10
- (ii) knowingly give false evidence before the Committee; or
- (iii) refuse or fail to produce any book, document, object or other material of evidence in his or her possession or under his or her control which he or she has been instructed to produce; 15
- (b) properly subpoenaed in terms of section 11 who produces any book, object or other material of evidence before the Committee which he or she knows is false, fabricated, falsified or unlawfully or falsely altered; 20
- (c) who destroys, conceals, falsifies, fabricates or unlawfully or falsely alters any book, document, object or other material of evidence which he or she knows or may be reasonably expected to know may be relevant to a petition being considered or to be considered by the Committee; or 25
- (d) who knowingly furnishes the Committee with information or makes a statement before it which is false or misleading, 30
- is guilty of an offence.
- (4) Any person who wilfully obstructs or unduly influences the Committee, any member of the Committee or any member of the administrative support service from doing or not doing anything authorized in terms of this Act is guilty of an offence. 35
- (5) Any person who fails or refuses to comply with a resolution of the Legislature taken in terms of this Act is guilty of an offence. 40

Communication to Petitioner

14. The Secretary shall, in writing, communicate to the petitioner any resolution taken by the Legislature in respect of a petition and of the reasons thereof. 45

Penalties

15. A person convicted of an offence under section 13 is liable to a fine or to imprisonment for a period not exceeding 12 months or to both such fine and imprisonment. 5

Regulations

16. (1) The Speaker may make regulations in respect of - 10
- (a) the process and procedures for the submission of a petition; 10
 - (b) the registration of a petition and opening of a petition file by the Secretary; 15
 - (c) the preliminary investigation of a petition by the administrative support service; 15
 - (d) the process and procedures for the referral of a petition to a Committee; 20
 - (e) the process and procedures for the handling of a petition when the Legislature is not in session; and
 - (f) the procedure to deal with conflicts of interest. 25
- (2) The Speaker may make regulations in respect of -
- (a) the rights of a petitioner contemplated in this Act; 30
 - (b) any duty or function not provided for in subsection (1), which the Committee is required to perform;
 - (c) any duty or function not provided for in subsection (1), which the administrative support service is required to perform; 35
 - (d) any timeframe to be adhered to during any process or for any procedure contemplated in this Act;
 - (e) the archiving or disposal of a petition file that has been closed; 40
 - (f) the procedures and process for the issuing and serving of a subpoena for purposes of this Act;

- (g) any measures to be taken by the Legislature, the Committee to promote and facilitate participation by the citizens of the Province in the process of governance in the Province; or
- (h) in general, any matter not provided for in this section that may be necessary to prescribe in order to achieve or promote the objects of this Act.

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Short title

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17. This Act is called the Free State Petitions Act, 2008.