

WESTERN CAPE PROVINCIAL POWERS BILL

DRAFT BILL

To promote the exercise of provincial powers by the Western Cape; to establish the Western Cape Provincial Powers Committee; to require the Western Cape Government to report to the Western Cape Provincial Parliament on the assertion and assumption of provincial powers; to provide for the introduction of provincial and national legislation to assert the Western Cape's provincial powers; and to provide for matters connected therewith.

Preamble

REALISING that the national government is unable or unwilling to deliver services to the people of the Western Cape or to exercise its constitutional powers and responsibilities to promote the rights and interests of the residents of the Western Cape;

MAINTAINING that the Western Cape Provincial Parliament and the Western Cape Government and various local authorities in the province have the capacity and will to correct the failures of the national government;

ACCEPTING that the provincial and local authorities in Western Cape have a constitutional obligation to assert their existing provincial and local powers, and to seek all additional powers necessary in order to respect, protect, promote and fulfil the constitutional rights of all its residents;

RECALLING that the Western Cape Provincial Parliament has the constitutional authority to enact legislation on all functional areas listed in Schedules 4 and 5 of the Constitution;

APPRECIATING that plenary legislative authority rests with the National Parliament, but noting that Parliament has the power to assign additional powers to a province or local authority through national legislation, and that the national executive has the power under section 238 of the Constitution to delegate powers to the provinces;

AFFIRMING that it is in the interests of the residents of the Western Cape for the Western Cape Government and municipal authorities within its borders to seek to exercise the maximum possible degree of autonomy and control over their own affairs within the existing constitutional scheme; and

ASSERTING that, where it can be established that the national government is failing to fulfil its constitutional obligations to the Western Cape people, the provincial government must be empowered to step in to ensure that the constitutional rights of the Western Cape people are met.

BE IT THEREFORE ENACTED by the Provincial Parliament of the Western Cape, as

follows:-

1. Definitions

“areas of provincial and local autonomy” means those areas listed in section 3;

“the Provincial Powers Committee” means the committee of the Western Cape Provincial Parliament established in section 5.

2. Objects of this Act

The objects of this Act are:

- (a) to identify and remedy the failures of the national government through the assertion of the Western Cape’s provincial powers and the powers of local authorities located in the Western Cape;
- (b) to promote the assertion of the existing provincial powers in the Western Cape in all areas of provincial and local autonomy;

- (c) to seek actively the assignment or delegation of further powers to the Western Cape in all areas of provincial and local autonomy;
- (d) to mandate the Western Cape Government to prepare reports and to draft bills that will assert existing provincial powers, or seek the assignment or delegation of new provincial and local powers;
- (e) to enable the Western Cape Provincial Parliament to introduce draft national legislation for the delegation or devolution of provincial and local powers in the National Council of Provinces through its delegates.

3. The areas of provincial and local autonomy

- (1) The Western Cape intends to assert its existing provincial and local powers and/or to seek the delegation or assignment of powers in the following areas:
 - (a) Policing, including but not limited to those powers identified in Schedule 4A of the Constitution;
 - (b) Public transport, including municipal public transport;
 - (c) Energy, including electricity generation, transmission and reticulation;
 - (d) Trade, including international trade;
 - (e) Harbours, including national harbours; and
 - (f) Any other functional area proposed by the Premier, the Speaker or the Provincial Powers Committee and adopted by resolution of the Western Cape Provincial Parliament.
- (2) Any municipality in the province may request the Premier, the Speaker or the Provincial Powers Committee to propose an additional area of local autonomy.
- (3) In all areas of provincial and local autonomy the Western Cape Government shall:
 - (a) when it adopts regulations or policies or takes any decision, seek to promote the greatest degree of provincial autonomy; and
 - (b) seek the assignment or delegation of powers from the national government to the Western Cape Government and local authorities in the Western Cape

to the extent that doing so is consistent with the effective performance of its constitutional and statutory functions and obligations in that area of provincial autonomy.

4. Obligation to report and introduce draft bills

The Premier shall, within six months of the coming into force of this Act, for each of the areas of provincial and local autonomy table a separate report in the Western Cape Provincial Parliament addressing:

- (a) The current powers of the Western Cape Government, the national government and, if relevant, of municipalities under the Constitution, provincial legislation and national legislation;
- (b) The ways in which and the reasons why the national government has failed to perform its constitutional obligations or otherwise to govern effectively;
- (c) The additional powers that the Western Cape Government, or municipalities, require in order to rectify the national government's failure;
- (d) If appropriate, draft provincial legislation, regulations or policies to assert those powers;
- (e) If appropriate, draft national legislation to delegate or assign those powers from the national government.

5. The Provincial Powers Committee

- (1) The Provincial Powers Committee is established as a standing committee of the Western Cape Provincial Parliament.
- (2) The Provincial Powers Committee shall be composed of ten members nominated by the parties represented in the Western Cape Provincial Parliament, and shall be appointed by the Speaker.
- (3) The Provincial Powers Committee shall have the following functions:
 - (a) To consider any report filed by the Premier under section 4;
 - (b) To seek comment on the report from the national government, municipalities and any other affected organ of state;
 - (c) To invite and consider public comment on the report;

- (d) To appoint any of its own experts to advise it on the contents of the report; and
- (e) To make, within three months of receipt of a report, a recommendation to the Western Cape Provincial Parliament on what steps it should take under section 6.

6. Consideration and action by Western Cape Provincial Parliament

The Western Cape Provincial Parliament shall, within three months of receipt of a report in terms of section 4 and a recommendation in terms of section 5, consider the report and recommendation and adopt a resolution, including one or more of the following:

- (a) Approving the report;
- (b) Directing the Western Cape Government to supplement the report;
- (c) Directing the Provincial Powers Committee to introduce any draft provincial legislation;
- (d) Directing one of the Western Cape Provincial Parliament's delegates to the National Council of Provinces to introduce draft national legislation in that House;
- (e) Recommending to the National Assembly in terms of section 104(5) of the Constitution that it adopt or amend national legislation;
- (f) Adopting any other resolution consistent with the objects of this Act.

7. Supplementary reports

- (1) The Premier shall, every six months after the adoption of a resolution in terms of section 6, report to the Western Cape Provincial Parliament on:
 - (a) The provincial executive's progress in complying with any resolution adopted by the Western Cape Provincial Parliament under section 6;
 - (b) Any additional action that should be taken by the Western Cape Provincial Parliament with regard to any area of provincial autonomy; and
 - (c) Whether any additional area should be added to the list of areas of provincial and local autonomy in section 3.
- (2) The Provincial Powers Committee shall consider each supplementary report and prepare a recommendation for the consideration of the Western Cape Provincial Parliament on what further resolutions, if any, it should adopt.

- (3) The Western Cape Provincial Parliament shall consider any recommendation by the Provincial Powers Committee made in terms of subsection (2), and may adopt any resolution, including those in section 6(1).

8. Short title

This Act is called the Western Cape Provincial Powers Act, 2023.