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## GENERAL NOTICE

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**NOTICE 136 OF 2009  
NORTHERN CAPE PROVINCIAL LEGISLATURE**

**NORTHERN CAPE PROVINCIAL LEGISLATURE FINANCIAL MANAGEMENT  
BILL, 2009**

The Northern Cape Provincial Legislature Financial Management Bill, 2009, contained in this Notice, is hereby published for public comment. **Written representation may be made to the Northern Cape Provincial Legislature and must be directed to:**

Adv HJ Botha  
Legal Department  
Northern Cape Provincial Legislature  
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no later than 30 November 2009.

**SJK LEGODI  
SECRETARY**

**BILL**

**To regulate the financial management of the Legislature in a manner consistent with its status in terms of the Constitution; to ensure that all revenue, expenditure, assets and liabilities of the Legislature are managed efficiently, effectively and transparently; to provide for the responsibilities of persons entrusted with financial management in the Legislature; and to provide for matters connected therewith.**

**PREAMBLE**

**RECOGNISING** that the Legislature is governed by the democratic values and principles enshrined within the Constitution;

**AND** in order to -

- promote and maintain a high standard of professional ethics in the financial management of the Legislature;
- promote the efficient, economic and effective use of resources allocated to the Legislature; and
- ensure the transparent, accountable and sound management of the revenue, expenditure, assets and liabilities of the Legislature,

**BE IT ENACTED** by the Legislature of the province of the Northern Cape as follows: -

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## CHAPTER I INTERPRETATION AND OBJECTS

### Definitions

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

“**accounting officer**” means the Secretary to the Legislature, and includes, where appropriate, a person acting as Secretary to the Legislature, duly appointed by the Speaker in as referred to in section 4(4) of this Act;

“**annual provincial budget**” means the annual provincial budget referred to in section 27(2) of the PFMA;

“**annual report**”, means the annual report referred to in section 54;

“**approved budget**” means the total amount of funds that the Legislature has -

- (a) appropriated from the Provincial Revenue Fund for the Legislature in a vote in terms of a provincial appropriation Act; and
- (b) approved from the Legislature’s own funds in terms of section 15(2)(b);

“**close relative**” in relation to any person means –

- (a) a spouse; or
- (b) a child, stepchild, parent, stepparent or parent in law;

“**Committee**” means a committee of the Legislature in terms of section 3(1) of this Act responsible for oversight;

“**financial year**” means the period commencing on the first day of April in a year up to the thirty first day of March in the following year, both days inclusive;

“**fruitless and wasteful expenditure**” means expenditure that was made in vain and would have been avoided, had reasonable care been exercised;

“**irregular expenditure**” means expenditure, other than unauthorised expenditure, incurred in contravention of, or that is not in accordance with, a requirement of this Act or any other applicable legislation;

“**Legislature**” means the Legislature of the Province and “**House**” has a similar meaning;

“**main division**” means one of the main segments into which the Legislature’s approved budget is divided and which specifies the total amount which is appropriated and approved for the items under that segment;



**“MEC”** means the member of the Executive Council responsible for financial matters in the province;

**“month”** means a calendar month being the period that extends from a day in a month up to and including the day that precedes the day which corresponds numerically to the first mentioned day in the following month;

**“official”** means an employee of the Legislature;

**“overspending”** -

- (a) in relation to the approved budget of the Legislature, means causing expenditure to exceed the amount appropriated and approved for the budget; or
- (b) in relation to a main division within the approved budget of the Legislature, means causing expenditure under the main division to exceed the amount appropriated or approved for that main division subject to section 21;

**“PFMA”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**“political parties”** means political parties represented in the Legislature;

**“prescribe”** means prescribe by regulation and “prescribed” has a similar meaning;

**“province”** means the Northern Cape Province as established by section 103(1)(g) of the Constitution of the Republic of South Africa, 1996;

**“provincial treasury”** means a treasury established in terms of section 17 of the PFMA;

**“quarter”** means the following periods in a financial year:

- (a) 1 April to 30 June;
- (b) 1 July to 30 September;
- (c) 1 October to 31 December; or
- (d) 1 January to 31 March;

**“Rules Committee”** means the Rules Committee established in terms of the Standing Rules;

**“senior manager”** means a person as referred to in section 1 of the Northern Cape Legislature Service Bill of 2009;

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

**“spouse”** means a person’s –

- (a) partner in a marriage or civil union;

- (b) partner in a customary union according to indigenous law; or
- (c) partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union;

“standards of generally recognised accounting practice” means an accounting practice complying with standards issued by the Minister of Finance on the advice of the Accounting Standards Board;

“this Act” includes regulations issued in terms of section 64 and the Schedules to this Act;

“unauthorised expenditure” means -

- (a) overspending of the Legislature’s approved budget or a main division within that budget;
- (b) any expenditure from the Legislature’s approved budget or a main division within that budget for a purpose unrelated to the approved budget or main division, subject to section 21; and
- (c) any expenditure of donor funds for a purpose not specified in the agreement with the donor; and

“vote” means that portion of the Legislature’s budget which forms part of an appropriation Act and which specifies the total amount of funds to be appropriated from the Provincial Revenue Fund for the Legislature.

### Objects of Act

2. (1) The objects of this Act are –
- (a) to ensure transparency, accountability and sound management of the Legislature’s revenue, expenditure, assets and liabilities;
  - (b) to ensure a consultative relationship between the Legislature and the Provincial Treasury, conducted at a high level and based on respect for –
    - (i) the constitutional status of the Legislature ;
    - (ii) the constitutional requirements for the tabling of money bills;
    - (iii) budget processes, standards of generally recognised accounting practice, uniform expenditure classifications and the treasury norms and standards established in terms of the PFMA; and

- (iv) the fiscal policy of the provincial government to the extent that it is applicable to the Legislature;
  - (c) to provide the Provincial Treasury with –
    - (i) an opportunity to make comments on proposed annual budgets and adjustment budget of the Legislature;
    - (ii) information on the proposed annual budget and adjustment budget of the Legislature for inclusion in the provincial annual budget and adjustment budget; and
    - (iii) regular information on expenditure by the Legislature; and
  - (d) to provide for oversight of the Legislature's budgeting and expenditure through an appropriate committee of the Legislature.
- (2) In the event of inconsistency between this Act and any other provincial legislation, this Act prevails.

## CHAPTER II

### OVERSIGHT, EXECUTIVE AUTHORITY AND ADMINISTRATION OF ACT

#### *Part 1*

#### *Oversight*

#### **Committee oversight**

3. (1) The Committee must maintain oversight of the financial management of the Legislature by amongst other –
- (a) considering the strategic plan, annual performance plan and budget tabled in the Legislature in terms of section 16(1);
  - (b) considering instructions or directives issued by the Speaker in terms of this Act;
  - (c) considering the annual report tabled in the Legislature in terms of section 59; and
  - (d) performing any other functions specified in this Act or by the Rules of the Legislature.
- (2) Representation on the Committee must be in accordance with the Rules of the Legislature, but the Speaker and the Deputy Speaker may –

- (a) not be members of the Committee; and
- (b) only participate in the deliberations of the Committee at the request of the Committee.

## *Part 2*

### *Executive Authority*

#### **Executive authority of Speaker**

4. (1) The Speaker has executive authority and is responsible to ensure that treasury functions in respect of the Legislature are performed.

(2) Treasury functions amongst other include to -

- (a) oversee the preparation of the Legislature's budget;
- (b) exercise control over the implementation of the Legislature budget, including donor funds;
- (c) promote and enforce transparency and effective management in respect of revenue, expenditure, assets and liabilities of the Legislature;
- (d) ensure that the Legislature fiscal policies do not materially and unreasonably prejudice national and provincial economic policies; and
- (e) perform any other function assigned to the Speaker in terms of this Act.

(3) The Speaker is accountable to the Legislature for the effective and efficient financial management of the Legislature.

(4) The Speaker appoints the accounting officer as envisaged in the Northern Cape Legislature Service Bill of 2009.

(5) The Speaker may, in exceptional circumstances, in consultation with the Rules Committee approve or instruct in writing that a person other than the person mentioned in subsection (4) be the accounting officer.

(6) The Speaker must act in accordance with the Code of Ethics in Schedule 1.

*Part 3*  
*Administration of Act*

**Accounting officer**

5. The accounting officer is accountable to the Speaker for the financial management of the Legislature.

**General financial management functions**

6. The accounting officer must ensure that –

- (a) the Legislature's resources are used effectively, efficiently and transparently;
- (b) full and proper records of the financial affairs of the Legislature are kept;
- (c) the Legislature maintains effective, efficient and transparent systems of financial management, risk management, internal control and internal audit;
- (d) the Legislature complies with any obligations in relation to taxes, levies, duties, pensions, medical aid and auditing that may be imposed by legislation;
- (e) the Legislature has appropriate systems to manage the performance of its officials;
- (f) there are suitable training and awareness programmes related to financial management for officials of the Legislature;
- (g) unauthorised, irregular and fruitless and wasteful expenditure and other losses are prevented, and appropriate steps are taken where such expenditure has occurred;
- (h) disciplinary action is instituted against an employee of the Legislature who has allegedly committed an act of financial misconduct; and
- (i) when appropriate, criminal proceedings are initiated against a person who has allegedly committed an offence in terms of section 68.

**Performance of accounting officer**

7. (1) A performance agreement between the Speaker and the accounting officer must –
- (a) be concluded within one month after the accounting officer is appointed, and thereafter within one month after the start of each financial year;

- (b) specify performance standards linked to the objectives and targets of the Legislature's performance plan for the financial year;
- (c) provide for an annual assessment of the accounting officer's performance by the Speaker; and
- (d) specify the consequences of sub-standard performance.

(2) The provisions of this Act which confers responsibilities on the accounting officer forms part of the performance agreement of the accounting officer.

(3) The annual assessment of the accounting officer's performance must take cognisance of the audit report on the annual financial statements of the Legislature.

#### **Acting accounting officer**

8. If the position of accounting officer is vacant, or if the accounting officer is unable to perform the functions of that position, those functions must be performed by another senior manager designated in writing.

#### **Delegation of authority and duties by accounting officer**

9. (1) The accounting officer may delegate an authority or duty conferred on the accounting officer by this Act to a senior manager in accordance with a system of delegation.

(2) The accounting officer must develop the system of delegation in consultation with the Speaker and it must –

- (a) maximise administrative and operational efficiency; and
- (b) provide adequate checks and balances in the financial management of the Legislature.

(3) The accounting officer must regularly review delegations made in terms of subsection (1) and, if necessary, amend or withdraw such delegations.

(4) A delegation in terms of subsection (1) –

- (a) must be in writing;
- (b) is subject to limitations and conditions that the accounting officer may impose;
- (c) may be to an individual or to the holder of a specific post in the administration of the Legislature;

- (d) may authorise that official to sub-delegate, in writing, the delegated authority or duty to another official, or to the holder of a specific post in the administration of the Legislature; and
- (e) does not divest the accounting officer of responsibility for the exercise of the delegated authority or the performance of the delegated duty.

(5) The accounting officer may confirm, vary or revoke a decision taken by an official in terms of a delegation under subsection (1), subject to rights that may have become vested as a consequence of the decision.

### **Responsibilities of officials**

10. Every official who exercises a financial management responsibility must –

- (a) comply with the provisions of this Act, to the extent applicable to that official;
- (b) comply with the terms of a delegation in terms of section 9; and
- (c) take all reasonable steps within that official's area of responsibility to ensure that –
  - (i) the Legislature's system of financial management and internal control is implemented diligently;
  - (ii) the Legislature's financial and other resources are used effectively, efficiently and transparently;
  - (iii) any unauthorised expenditure, irregular expenditure, fruitless and wasteful expenditure and other losses are prevented, and, when such expenditure or losses occur, are reported to the accounting officer;
  - (iv) all revenue due to the Legislature is collected; and
  - (v) the Legislature's assets and liabilities are managed effectively, and that assets are safeguarded and maintained to the extent necessary.

### **Fiduciary responsibilities**

11. (1) The accounting officer and any other official charged with any responsibility under this Act must –

- (a) act with fidelity, honesty, integrity and in the best interest of the Legislature in managing its financial affairs;

- (b) disclose all material facts which are available to that person or which is reasonably discoverable, and which may influence a decision or action in terms of this Act; and
  - (c) seek to prevent prejudice to the financial interest and good reputation of the Legislature.
- (2) For the purposes of subsection 1(b), a disclosure must be made –
- (a) in the case of the accounting officer to the Speaker; and
  - (b) in the case of an official, to the accounting officer.
- (3) No person that has a responsibility under this Act –
- (a) may act in a way that is inconsistent with this Act; or
  - (b) may use their position or confidential information obtained in the exercise of their responsibilities for personal gain or to improperly benefit themselves or any other person.

### CHAPTER III PLANNING AND BUDGETING

#### Preparation of strategic plan, annual performance plan and budget

12. The Speaker must –

- (a) oversee the preparation of the Legislature's strategic plan, annual performance plan, budget and adjustment budget in accordance with this Chapter; and
- (b) table the strategic plan and annual performance plan in the Legislature.

#### Strategic Plan

13. (1) The accounting officer must, within six months after an election prepare and present to the Speaker a strategic plan for the Legislature, which plan must be reviewed annually.

(2) The strategic plan for the Legislature must –

- (a) cover the following five years or other period determined by the Legislature;
- (b) specify the priorities of the Legislature for the period of the plan;
- (c) include objectives and outcomes for each programme of the Legislature;
- (d) include multi-year projections of all revenue and expenditure; and



- (e) include performance measures and indicators for assessing its performance in implementing the strategic plan.

#### **Annual performance plan**

14. (1) The accounting officer must, within two months prior to the start of the financial year, present an annual performance plan for the Legislature to the Speaker.

(2) The annual performance plan must –

- (a) cover the following financial year and the two financial years thereafter or other period determined by the Legislature;
- (b) indicate any changes to the Legislature's priorities as set out in the strategic plan prepared in terms of section 13;
- (c) update the projections of revenue and expenditure presented in the strategic plan;
- (d) specify performance targets related to each of the performance measures and indicators for assessing the Legislature's performance in achieving the objectives and outcomes detailed in the strategic plan; and
- (e) provide details of the Legislature's donor funded projects, including –
  - (i) the donors and the amounts so received;
  - (ii) the purpose of the projects; and
  - (iii) performance measures and indicators for assessing the Legislature's performance in achieving the purpose of the projects.

(3) Despite the provisions of section 14(1) the annual performance plan for the financial year in which an election of the Legislature is held may be amended after the election.

#### **Annual budget**

15. (1) The accounting officer must, within two months prior to the start of a new financial year, present a budget for the Legislature to the Speaker.

(2) The Legislature's budget must –

- (a) cover the following financial year and the two financial years thereafter or other period determined by the Legislature;
- (b) specify the Legislature's expected revenues distinguishing between –

- (i) funds to be appropriated through the annual provincial budget from the Provincial Revenue Fund;
  - (ii) funds that are a direct charge against the Provincial Revenue Fund;
  - (iii) funds derived from the Legislature's own revenue sources, excluding donor funds; and
  - (iv) unspent funds in terms of section 22;
- (c) specify the Legislature's proposed expenditure requirements per main division within the budget, distinguishing between the sources of funds identified in paragraph (b);
- (d) specify the purpose of each main division within the budget and provide explanations and other information substantiating the amounts proposed in terms of paragraphs (b) and (c);
- (e) specify the allocations to Members of the Legislature and political parties made in terms section 33, providing details of the different purposes for which allocations are made and the amounts allocated for such purposes;
- (f) provide details of all transfers to other entities;
- (g) contain a schedule of planned expenditure under the Legislature's donor funded projects; and
- (h) be in a prescribed format.

**Submission of drafts of strategic plan, annual performance plan and budget**

16. (1) The Speaker must after consultation with the MEC, but before the budget or the adjustment budget is tabled in the Legislature in terms of subsection (3), determine the budget or the adjustment budget of the Legislature.

(2) The Speaker must –

- (a) after consultation with the MEC, determine a process for submitting the Legislature's budget and adjustment budget to the Provincial Treasury;
  - (b) submit the budget and adjustment budget to the Provincial Treasury for consolidation in the annual provincial budget or provincial adjustment budget;
- and

- (c) represent the Legislature in all discussions with the MEC on aspects of the Legislature's budget or adjustment budget.

(3) The Speaker must table in the Legislature, for referral to the Committee for consideration and reporting back to the House –

- (a) the strategic plan of the Legislature, within ten working days of receiving it from the accounting officer;
- (b) the annual performance plan, budget and the comments, inputs and recommendations made by the MEC on the budget, at least one month before the budget must be submitted to the Provincial Treasury;
- (c) the adjustment budget, at least one month before the adjustment budget must be submitted to the Provincial Treasury; and
- (d) any revisions to the approved allocations of the Legislature's own funds.

#### **Annual appropriations and approvals**

17. (1) For each financial year, the Legislature must –

- (a) appropriate funds contemplated in section 15(2)(b)(i) in the annual provincial budget; and
- (b) approve the use of the funds contemplated in section 15(2)(b)(iii).

(2) Revision of an appropriation in terms of subsection (1)(a) must be made –

- (a) by a provincial adjustment budget referred to in section 31 of the PFMA; and
- (b) in accordance with the procedure contemplated in section 16(2).

(3) Revision of an approval in terms of subsection (1)(b) must be approved by the Legislature.

#### **Expenditure before annual budget is passed**

18. (1) If the Legislature does not pass its annual budget before the start of the financial year to which it relates –

- (a) funds may be withdrawn from the Provincial Revenue Fund for the requirements of the Legislature during that financial year as a direct charge against the Fund until the budget is passed; and

- (b) funds from the Legislature's own revenue sources may be used to meet the requirements of the Legislature.
- (2) Funds made available to the Legislature in terms of subsection (1) may not –
- (a) during the first four months of the financial year, exceed forty-five per cent of the total amount in the previous approved budget;
  - (b) during each of the following months, exceed ten per cent of the total amount in the previous approved budget; or
  - (c) in aggregate, exceed the total amount appropriated and approved in the previous approved budget.
- (3) The funds provided for in subsection (1) are not additional to funds appropriated or approved for the relevant financial year, and any funds withdrawn or used in terms of that subsection must be regarded as forming part of the funds appropriated and approved in the budget for that financial year.

#### **Unauthorised expenditure**

19. (1) This section applies to any unauthorised expenditure incurred by the Legislature, other than the unauthorised expenditure of donor funds.

(2) Unauthorised expenditure incurred by the Legislature does not become a charge against the Provincial Revenue Fund, unless –

- (a) the expenditure is an overspending of the Legislature's approved budget and the Legislature appropriates an additional amount to cover the overspending; or
- (b) the expenditure is unauthorised for another reason and the Legislature authorises the expenditure as a direct charge against the Provincial Revenue Fund.

(3) The Legislature must advise the Provincial Treasury of any unauthorised expenditure that is authorised in terms of subsection (2).

(4) If the Legislature authorises unauthorised expenditure in terms of subsection (2), but does not appropriate an additional amount to cover the amount of the unauthorised expenditure, the unauthorised expenditure becomes a charge against the Legislature's own funds.

(5) Unauthorised expenditure which the Legislature does not approve must be recovered from the person responsible for the unauthorised expenditure.

#### **Unauthorised expenditure of donor funds**

20. No unauthorised expenditure of donor funds is allowed.

#### **Virement between main divisions within approved budget**

21. (1) The accounting officer may use a saving in the total amount appropriated or approved under a main division within the Legislature's approved budget towards defraying excess expenditure under another main division within the approved budget, unless the Speaker directs otherwise.

(2) The accounting officer must obtain the written permission of the Speaker to defray excess expenditure contemplated in subsection (1) from the savings of an amount –

- (c) specifically and exclusively appropriated or approved for a purpose mentioned under a main division within the approved budget;
- (d) appropriated or approved for transfer to another institution; or
- (e) appropriated or approved for capital expenditure when used to defray current expenditure.

(3) The amount of a saving under a main division of the Legislature's approved budget that may be used in terms of subsection (1), may not exceed eight per cent of the amount appropriated and approved under that main division.

(4) This section does not authorise the use of a saving of an amount that is a direct charge against the Provincial Revenue Fund in order to supplement the Legislature's appropriated funds.

(5) The Speaker may make regulations or issue instructions in accordance with sections 64 and 65 respectively, concerning the application of this section.

#### **Unspent funds**

22. (1) The Legislature is not required to return to the Provincial Revenue Fund money appropriated or approved for a particular financial year but not spent in that year.

- (2) Funds appropriated for, but not spent in a particular financial year must be regarded as funds derived from the Legislature's own revenue sources, and the approval of its use in subsequent financial years must be in accordance with section 17(1)(b).
- (3) Funds derived from the Legislature's own revenue sources that are approved for a particular financial year, but not spent in that year, must be approved for use in subsequent financial years in accordance with section 17(1)(b).
- (4) Despite the provisions of subsection (1), funds retained by the Legislature must be re-appropriated within the next two financial years.

#### CHAPTER IV CASH MANAGEMENT AND INVESTMENT

##### Cash management and investment

23. (1) The Speaker must prescribe regulations —
  - (a) to ensure efficient and effective banking and cash management; and
  - (b) for investing money not immediately required.
- (2) The accounting officer is responsible for establishing systems and procedures for the effective implementation of the regulations in terms of subsection (1).

##### Opening of bank accounts

24. (1) The accounting officer, with the approval of the Speaker, and in accordance with the regulations referred to in section 23, must open and maintain —
  - (a) a bank account into which all monies received by the Legislature must promptly be paid; and
  - (b) such other bank accounts as are necessary for the effective and efficient management of the Legislature's funds.
- (2) The Legislature may not open a bank account —
  - (a) abroad;
  - (b) with an institution not registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); or
  - (c) otherwise than in the name of the Legislature.

(3) A bank account opened in terms of this section does not form part of the Provincial Revenue Fund.

#### **Control of bank accounts**

25. The accounting officer -

- (a) must administer the Legislature's bank accounts;
- (b) is accountable to the Speaker for the Legislature's bank accounts; and
- (c) must enforce compliance with section 26.

#### **Withdrawals from bank accounts**

26. (1) Only the accounting officer, or an official to whom that authority has been delegated in terms of section 9, may withdraw money, or authorise the withdrawal of money, from the Legislature's bank accounts.

(2) A delegation in terms of subsection (1) must be in accordance with the regulations made in terms of section 23.

(3) Money may be withdrawn from a bank account of the Legislature only for -

- (a) defraying expenditure in accordance with the Legislature's approved budget or authorised for the Legislature as a direct charge against the Provincial Revenue Fund;
- (b) defraying expenditure incurred in relation to a donor funded project;
- (c) refunding money incorrectly paid into a bank account;
- (d) making other refunds approved by the Speaker; or
- (e) cash management or investment purposes in accordance with the regulations made in terms of section 23.

#### **Restrictions on guarantees and other transactions**

27. (1) The Legislature may not -

- (a) issue a guarantee or security; or
- (b) enter into any other similar transaction that binds or may bind it to future financial commitment.

(2) The Legislature is not bound by a guarantee, security or other transaction entered into in breach of sub-section (1).

(3) Subsection (1) does not prevent the Legislature from –

- (a) issuing or being bound by guarantees for loans in terms of housing administered by the Legislature for its employees;
- (b) entering into an operating lease agreement for the use of property or equipment; or
- (c) using credit cards, fleet management cards or other credit facilities repayable within thirty days from the date on which an account is rendered.

(4) The Speaker may in consultation with the relevant MEC approve an overdraft facility for the Legislature for the purpose of bridging finance.

#### **Requisitioning of funds for cash-flow management**

28. The Speaker must, after consultation with the MEC, determine a process for requisitioning appropriated funds to provide for sound cash-flow management.

## **CHAPTER V FINANCIAL MANAGEMENT**

#### **Asset and liability management**

29. (1) The accounting officer is responsible for managing –

- (a) the Legislature's assets, including safeguarding and maintaining those assets; and
- (b) *the Legislature's liabilities.*

(2) For the purposes of subsection (1), the accounting officer must ensure that –

- (a) the Legislature maintains an accounting and information system that accounts for its assets and liabilities;
- (b) the Legislature's assets and liabilities are valued in accordance with standards of generally recognised accounting practice; and
- (c) the Legislature maintains a system of internal control of assets and liabilities, including a register of assets and liabilities.



(3) The accounting officer may not commit the Legislature to a liability for which money has not been appropriated.

#### **Revenue management**

30. (1) The accounting officer is responsible for managing the revenue of the Legislature in an effective and transparent manner.

(2) For the purposes of subsection (1), the accounting officer must ensure that –

- (a) the Legislature has effective revenue collection systems;
- (b) all money received is deposited promptly into the bank account contemplated by section 24(1)(a);
- (c) the Legislature maintains an accounting and information system which –
  - (i) recognises revenue when it is earned or becomes due; and
  - (ii) accounts for receipts of revenue;
- (d) the Legislature maintains a system of internal control in respect of revenue; and
- (e) all revenue received by the Legislature is reconciled at least on a weekly basis.

#### **Management of debtors**

31. (1) The accounting officer must take effective and appropriate steps to collect all monies due to the Legislature including –

- (a) maintaining proper accounts and records of all debtors, including amounts received in part payment; and
  - (b) if appropriate, instituting legal proceedings.
- (2) The accounting officer may settle or write off a debt only as prescribed.
- (3) Interest must be charged on debt owed to the Legislature as prescribed.

#### **Expenditure management**

32. (1) The accounting officer is responsible for managing the expenditure of the Legislature.

(2) For the purpose of subsection (1), the accounting officer must ensure that –

- (a) the Legislature maintains an effective system of expenditure control, which includes procedures for the approval and authorisation of the withdrawal and payment of funds;
- (b) the Legislature maintains an accounting and information system which –
  - (i) recognises expenditure when it is incurred;
  - (ii) accounts for creditors of the Legislature; and
  - (iii) accounts for payments made by the Legislature;
- (c) the Legislature maintains a system of internal control in respect of creditors and payments;
- (d) the Legislature makes payment –
  - (i) directly to the person to whom it is due unless agreed otherwise or for good reason; and
  - (ii) either electronically or by way of non-transferable cheques, but cash payments and payments by way of cash cheques may be made for exceptional reasons, and only up to a prescribed limit;
- (e) all amounts owed by the Legislature are paid within 30 days of receiving the relevant invoice or statement, unless –
  - (i) the amount is unclear or disputed; or
  - (ii) it is agreed otherwise; and
- (f) all financial accounts of the Legislature are closed monthly and reconciled with its records.

#### **Support for members and political parties**

33. (1) Each political party must be provided with financial and administrative assistance in proportion to its representation in the Legislature to enable the party and its leader to perform their functions in the Legislature effectively.

(2) The Speaker must prescribe the allocation and use of funds provided by the Legislature to political parties or to members of the Legislature.

(3) Before making regulations in terms of subsection (2), the Speaker must consult with the political parties.

(4) The regulations must –

- (a) regulate the allocation of funds in an equitable manner;
- (b) specify the purposes for which funds may be used;
- (c) provide for the prompt payment of funds into a bank account;
- (d) stipulate the responsibilities of the members of the Legislature and political parties to account for allocated funds;
- (e) establish a procedure according to which members of the Legislature and political parties account for the use of funds;
- (f) contain a format for financial statements for accounting for the use of funds;
- (g) require political parties to submit audited financial statements in the prescribed format to the accounting officer;
- (h) provide for the recovery of funds spent irregularly; and
- (i) establish a dispute resolution procedure.

(5) The regulations must authorise the accounting officer to withhold funds allocated to a political party or a member of the Legislature –

- (a) until the accounting officer receives –
  - (i) adequate information concerning the ability of the political party or member to manage and account for the funds;
  - (ii) outstanding audit reports on the use of the Legislature funds by the political party or member; and
  - (iii) other information reasonably necessary to confirm that the political party or member is entitled to the funds; and
- (b) in instances of a qualified audit report in respect of such funding, until adequate measures are put in place to rectify the qualification.

#### **Transfer payments**

34. (1) Before transferring funds from the Legislature to a person, the accounting officer must–

- (a) obtain written assurance from the person that it implements effective, efficient and transparent financial management and internal control systems;
- or

- (b) render the transfer subject to conditions and remedial measures requiring the entity to establish and implement effective, efficient and transparent financial management and internal control systems.

(2) Subsection (1) does not apply to a transfer to a person in another country or to an international institution.

(3) A transfer contemplated in subsection (2) is governed by the legal instrument regulating the relationship between South Africa and that person or institution.

### **Budget implementation**

35. The accounting officer is responsible for implementing the Legislature's budget and must ensure that –

- (a) spending is in accordance with the approved budget; and
- (b) revenue and expenditure are properly monitored.

### **Executive directive with financial implications**

36. (1) A directive by the Speaker that has financial implications must be in writing; and

- (a) be addressed to the accounting officer.

(2) If implementation of a directive contemplated by subsection (1) is likely to result in unauthorised expenditure, the accounting officer -

- (a) may not proceed with the implementation of the directive; and
- (b) must inform the Speaker in writing of the likelihood that the directive may lead to unauthorised expenditure.

(3) If the accounting officer proceeds to implement a directive contemplated in subsection (2), without receiving a further instruction from the Speaker in terms of subsection (5), and it results in unauthorised expenditure, the accounting officer is responsible for such unauthorised expenditure.

(4) An official may not implement a directive by the Speaker that may have financial implications, unless the accounting officer issues a written instruction to proceed with implementation.

(5) The Speaker may instruct the accounting officer to proceed with the implementation of a directive contemplated in subsection (2) only if it is to provide for -

- (a) an expenditure of an exceptional nature which is currently not provided for in the Legislature's budget and which cannot, without serious prejudice to the interest of the Legislature, be postponed to a future appropriation or approval of funds; or
  - (b) an unforeseeable and unavoidable expenditure approved by the Legislature.
- (6) If the Speaker instructs the accounting officer to proceed with the implementation of a directive contemplated in subsection (2), the Speaker must specify the instruction and the reasons for that instruction in writing and without delay -
- (a) give a copy to the accounting officer; and
  - (b) table a copy in the Legislature for prompt referral to the Committee.
- (7) On receipt of a written instruction contemplated in subsection (6), the accounting officer must file a copy with the Auditor-General promptly.

#### **Impending shortfalls and overspending**

37. The accounting officer must –

- (a) report in writing to the Speaker –
  - (i) all impending shortfalls in budgeted revenue and overspending of a main division within the Legislature's vote; and
  - (ii) any steps taken to prevent or rectify such shortfalls or overspending; and
- (b) comply with any remedial measures imposed by the Speaker to prevent or rectify such shortfalls or overspending.

## **CHAPTER VI SUPPLY CHAIN MANAGEMENT**

#### **Application of chapter**

38. This Chapter applies to –

- (a) the procurement by the Legislature of goods and services; and
- (b) the disposal and letting of the Legislature's assets, including the disposal of goods no longer required.

### Supply chain management regulations

39. The Speaker must prescribe a supply chain management system which –
- (a) is fair, equitable, transparent, competitive and cost effective;
  - (b) promotes high ethical standards and prohibits fraud, corruption, favouritism and unfair and irregular practices;
  - (c) requires disclosure of and deals appropriately with conflicts of interest;
  - (d) establishes appropriate supply chain management processes and procedures, including –
    - (i) demand management;
    - (ii) acquisition management;
    - (iii) logistics management;
    - (iv) disposal management;
    - (v) risk management;
    - (vi) regular assessment of supply chain performance;
  - (e) complies with other applicable legislation; and<sup>1</sup>
  - (f) covers at least the matters specified in Schedule 2 to this Act.

### Implementation of supply chain management policy

40. The accounting officer must develop a policy which –
- (a) implements the supply chain management regulations;
  - (b) takes all reasonable steps to ensure that proper mechanisms are in place to minimise dishonesty, favouritism and unfair and irregular practices;
  - (c) ensures that contracts concluded for the supply of services and goods are properly enforced;
  - (d) monitors the performance of contractors; and
  - (e) regularly reports to the Speaker on –
    - (i) the management of contracts and the performance of contractors; and
    - (ii) the implementation of the regulations.

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<sup>1</sup> This includes the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003). [PERMANENT FOOTNOTE]

**Unsolicited offers**

41. (1) The Speaker may prescribe a system for considering offers to supply goods or services that are unsolicited or are made other than in accordance with the supply chain management regulations contemplated in section 39.

(2) The accounting officer -

- (a) is not obliged to consider an offer contemplated in subsection (1); and
- (b) may consider an offer contemplated in subsection (1) only as prescribed.

**Tenders not recommended**

42. (1) The accounting officer must notify the Auditor-General and the Speaker in writing if a contract is concluded in respect of a tender, quotation, or other bid other than the one recommended.

(2) Subsection (1) does not apply if a contract was concluded in order to rectify an irregularity.

**Members of Legislature barred from serving on tender committee**

43. No Member of the Legislature may -

- (a) be a member of a committee evaluating or approving tenders, quotations, contracts or other bids for the Legislature;
- (b) attend a meeting of such committee as an observer; or
- (c) participate in evaluating or approving tenders, quotations, contracts or other bids for the Legislature.

**Interference**

44. No person may -

- (a) interfere with, or improperly influence, the supply chain management system of the Legislature;
- (b) impede the accounting officer in fulfilling the responsibilities of the accounting officer in terms of this Chapter; or
- (c) amend or tamper with a tender, quotation, contract or bid after its submission.

### **Prohibition on contracts**

45. No contract to provide goods or services to the Legislature may be awarded to –
- (a) a person elected to serve in a public office as referred to in the Remuneration of Public Office Bearers Act, 1998 (Act 20 of 1998), in the province;
  - (b) a person in the employ of the Legislature or a political party represented in the legislature;
  - (c) an entity in which a person mentioned in paragraphs (a) or (b) is a Director or has a controlling or other substantial interest; or
  - (d) a close relative of any person mentioned in paragraphs (a) or (b).

## **CHAPTER VII**

### **AUDIT COMMITTEE AND INTERNAL AUDITORS**

#### **Establishment of audit committee**

46. (1) The Speaker must subject to subsection (7) appoint an audit committee.
- (2) The audit committee must –
- (a) be constituted in a manner that ensures its independence; and
  - (b) consist of at least three persons with appropriate experience and knowledge.
- (3) More than half of the members of the audit committee must be individuals who –
- (a) are not employed by the Legislature or the state and are not Members of Parliament, a Legislature, or a Municipal Council; and
  - (b) have no personal or financial interest in any matter related to the Legislature.
- (4) The Speaker must appoint one of the members contemplated by subsection (3), who has the requisite knowledge and expertise of the functional area of the audit committee and has the business, financial and leadership skills, as the chairperson of the committee.
- (5) The terms of appointment and remuneration of members of the audit committee contemplated by subsection (3) must be consistent with the requirements for audit committees of other organs of state, taking into account tariffs determined by the South African Institute of Chartered Accountants in consultation with the Auditor-General, and tariffs determined by the National Treasury.



(6) A member of the audit committee who has a personal or financial interest in a matter before that committee must disclose such interest to that committee and withdraw from the proceedings when the matter is considered.

(7) The Speaker may direct that the legislature share an audit committee with another institution.

(8) If the Legislature shares an audit committee with another institution, subsections (2), (3) and (4) shall not apply.

#### **Functions of audit committee**

47. (1) The audit committee must –

(a) establish an audit charter to –

(i) guide its audit approach and in consultation with the internal auditors, that of the internal auditors;

(ii) set out its operating procedures; and

(iii) determine the rules that govern its relationship with the internal auditors and the accounting officer;

(b) carry out such investigations into the Legislature's financial and risk management as it considers necessary or as requested by the accounting officer;

(c) in the annual report of the Legislature, comment on –

(i) the effectiveness of internal control;

(ii) the quality of financial management and reports compiled by the accounting officer in terms of this Act; and

(iii) the quality of the annual financial statements;

(d) report to and advise the accounting officer on matters relating to the financial and risk management of the Legislature; and

(e) communicate any concerns that it deems necessary, to the Speaker and the Auditor-General.

(2) In performing its functions, the audit committee –

(a) has access to the financial records and other relevant information of the Legislature;

- (b) must meet as often as required to perform its functions, but at least four times a year; and
- (c) must liaise with –
  - (i) the internal auditors of the Legislature; and
  - (ii) the person designated by the Auditor-General to audit the financial statements of the Legislature.

#### **Allegations against accounting officer**

48. If the audit committee becomes aware of information implicating the accounting officer in fraud, corruption or gross negligence, it must report this promptly to the Speaker and the Committee.

#### **Internal audit**

49. (1) The accounting officer must establish the Legislature's internal audit function which must carry out internal audits in accordance with the standards set by the Institute of Internal Auditors.

(2) The internal auditors must prepare for the approval of the audit committee -

- (a) operating procedures to guide its relationship with the administration of the Legislature;
- (b) a three-year risk-based audit plan; and
- (c) an internal audit programme for each financial year setting out the proposed scope of each audit.

(3) The internal auditors must report at least quarterly to the accounting officer and the audit committee on its performance against the annual audit plan.

(4) The internal auditors must –

- (a) be independent of the activities that are audited; and
- (b) have access to the financial records and other relevant information of the Legislature.

## CHAPTER VIII REPORTING AND AUDITING

### *Part 1*

#### *In-year reporting*

##### **Monthly financial reports**

50. (1) The accounting officer must, within fifteen days after the end of each month, submit financial reports to the Speaker and Provincial Treasury, in a format determined by the Speaker, reflecting the state of the Legislature's finances for that month and for the financial year to date and specifying –

- (a) actual revenue by revenue source;
- (b) actual expenditure by main division;
- (c) actual capital expenditure by main division; and
- (d) when necessary, an explanation of –
  - (i) material variances from the Legislature's projected revenue by source, and from the Legislature's expenditure projections by main division; and
  - (ii) remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within the Legislature's approved budget.

(2) The report must include a projection of revenue and expenditure for the remainder of the financial year, and revisions from initial projections.

(3) The amounts reflected in the report must in each case be compared with the corresponding amounts set out in the projected cash-flows and in the Legislature's budget.

##### **Quarterly performance reports**

51. The accounting officer must, within thirty days of the end of each quarter, report to the Speaker on the Legislature's performance in implementing the annual performance plan in that quarter.

### **Mid-year budget and performance assessment**

52. The accounting officer must, before 31 October of each year, submit to the Speaker a report that assesses the performance of the Legislature during the first half of the financial year, taking into account –

- (a) the monthly reports referred to in section 50 for the first half of the financial year;
  - (b) the past year's annual report, and progress on resolving problems identified in the report; and
  - (c) performance in implementing the annual performance plan.
- (2) In the report the accounting officer must –
- (a) recommend whether an adjustment budget may be necessary; and
  - (b) revise projections for revenue and expenditure to the extent that this may be necessary.

### **Submission of reports to Committee**

53. (1) The Speaker must table the monthly, quarterly and mid-year reports in the Legislature within five working days of receiving the reports.

(2) The Legislature must refer the reports to the Committee promptly.

## ***Part 2***

### ***Annual report, financial statements and auditing***

#### **Preparation of annual reports**

54. (1) The accounting officer must, for each financial year, prepare an annual report.

(2) The purpose of an annual report is to –

- (a) provide a record of the activities of the Legislature during the financial year to which the report relates;
  - (b) provide a report on performance of the Legislature; and
  - (c) promote accountability for decisions made during the year by the Legislature.
- (3) The annual report must be based on the annual performance plan and must at least

contain –

- (a) the annual financial statements of the Legislature for the relevant financial year as submitted to the Auditor-General;
- (b) explanations that may be necessary to clarify the financial statements;
- (c) the Auditor-General's audit report on those financial statements;
- (d) an assessment by the accounting officer of the performance of the Legislature during that financial year against the objectives and outcomes identified in the Legislature's annual performance plan;
- (e) particulars of corrective action taken or to be taken in response to issues raised in the audit report of the previous financial year;
- (f) the audit committee's report; and
- (g) any other required information.

#### **Preparation of financial statements**

55. (1) The accounting officer must, for each financial year, prepare annual financial statements in accordance with the standards of generally recognised accounting practice or in accordance with standards determined by the Speaker after consultation with the MEC, for the purpose of maintaining consistency with other organs of state.

(2) The notes to the annual financial statements must at least –

- (a) include particulars of the remuneration of the accounting officer, senior managers, and other key management stakeholders as may be required;
- (b) disclose, in respect of each bank account held by the Legislature during the relevant financial year –
  - (i) the name of the bank where the account is or was held, and the type of account; and
  - (ii) year opening and year end balances in each of these bank accounts; and
- (c) provide a summary of all investments of the Legislature as at the end of the financial year.

#### **Submission of annual financial statements**

56. The accounting officer must, within two months after the end of the financial year, submit the annual financial statements –

- (a) to the Auditor-General for auditing; and
- (b) to Provincial Treasury for inclusion in the consolidated financial statements.

#### **Auditing of annual financial statements**

57. (1) The Auditor-General must –
- (a) audit the financial statements submitted in terms of section 56; and
  - (b) submit an audit report on those statements *via* the accounting officer to the Speaker within two months of receipt of the statements.
- (2) If the Auditor-General is unable to complete an audit within two months of receiving the financial statements, the Auditor-General must promptly submit a report outlining the reasons for the delay to the Speaker.
- (3) The Speaker must promptly table the report referred to in subsection (2) in the Legislature.

#### **Submission of annual report**

58. The accounting officer must submit the Legislature's annual report to the Speaker within one month of receipt of the audit report.

#### **Tabling and consideration of annual report**

59. (1) The Speaker must table the annual report as referred to in section 58, in the Legislature.
- (2) The annual report must after tabling in the Legislature –
- (a) be made public; and
  - (b) be referred to the Committee.

#### **Issues raised in audit reports**

60. The accounting officer must –
- (a) promptly address issues raised by the Auditor-General in an audit report; and
  - (b) advise the Speaker of the steps taken to address the issues.

**Consequences of non-compliance with certain provisions**

61. (1) If the accounting officer does not submit the annual financial statements to the Auditor-General in accordance with section 56 –
- (a) the accounting officer must promptly submit a written explanation setting out the reasons for the failure to –
    - (i) the Auditor-General; and
    - (ii) the Speaker; and
  - (b) the Speaker –
    - (i) must report to the Legislature concerning the reasons for the failure;
    - (ii) must take appropriate steps to ensure that the financial statements are submitted for auditing; and
    - (iii) may order that disciplinary steps be taken against the accounting officer or official responsible for the failure; and
  - (c) the Auditor-General may issue a special report on such failure to the Legislature which must be made public.
- (2) If the Speaker does not table the annual report in the Legislature within six months after the end of the financial year to which it relates –
- (a) the Speaker –
    - (i) must table a report on the reasons for the failure in the Legislature;
    - (ii) must take appropriate steps to ensure that the annual report is tabled in the Legislature; and
    - (iii) may order that disciplinary steps be taken against the accounting officer or official responsible for the failure.

*Part 3*

*General reporting responsibilities*

**Reporting of irregularities**

62. The accounting officer must report particulars of any unauthorised, irregular or fruitless and wasteful expenditure, or the likelihood of any such expenditure, to the Speaker immediately on discovery.

**Other information**

63. The accounting officer must comply with any request by the Legislature, the Committee, the Speaker, or the Auditor-General for information, documents, explanations and motivations.

**CHAPTER IX**

**REGULATIONS AND INSTRUCTIONS**

**Regulations**

64. (1) The Speaker may issue regulations not inconsistent with this Act concerning –
- (a) any matter in respect of which this Act authorizes regulations or policy;
  - (b) the handling of, and control over, the assets of the Legislature;
  - (c) the improvement and maintenance of the assets of the Legislature;
  - (d) the alienation, letting or other disposal of the assets of the Legislature;
  - (e) an appropriate supply chain management system for the Legislature which complies with Chapter 6;
  - (f) the financial management of the provision of support services and constituency funding to political parties represented in the Legislature;
  - (g) the rendering of free services by the Legislature administration;
  - (h) the determination of any scales of fees, other charges or rates relating to services provided by the Legislature's administration;
  - (i) the writing off of, or settling of claims in respect of, losses of money or other assets of the Legislature or amounts owed to the Legislature;
  - (j) liability for losses and damages, and procedures for recovery, including the recovery of fruitless and wasteful, unauthorized and irregular expenditure;
  - (k) the cancellation or variation of contracts that are to the detriment of the Legislature;



- (l) the settlement of claims by or against the Legislature;
  - (m) the waiver of claims by the Legislature;
  - (n) the remission of money due to the Legislature;
  - (o) gifts or donations to officials of the Legislature;
  - (p) vouchers or other proofs of receipts or payments, which are defective or have been lost or damaged;
  - (q) varying the time period within which any act must be performed in terms of this Act if it is necessary to achieve conformity with the budgeting or accounting cycles applicable to the public sector; and
  - (r) any other matter concerning the financial management of the Legislature that may facilitate the application of this Act.
- (3) The Speaker must-
- (a) ensure that drafts of regulations required by this Act are prepared;
  - (b) periodically review regulations made in terms of this Act; and
  - (c) when appropriate, ensure that draft amendments are prepared.
- (4) (a) The Speaker may approve a deviation from regulations or condone a failure to comply with the regulation, provided that the objectives of the Act are not undermined;
- (b) the reasons for any decision taken in terms of paragraph (a) must be recorded in writing and submitted to the oversight mechanism promptly.
- (5) The Speaker must ensure that a draft of any proposed regulations dealing with any matter contemplated in section 34 or Chapter 6 is published for public comment.
- (6) Regulations issued by the Speaker in terms of subsection (1) may come into operation effect only after they have been approved by the Legislature.
- (7) The accounting officer must publish all regulations approved by the Legislature –
- (a) in the Announcements, Tablings and Committee Reports document of the Legislature; and
  - (b) in the *Provincial Gazette*, if the regulations deal with a matter contemplated by subsection (5).

**Instructions**

65. (1) The Speaker may, for the purpose of the administration of this Act, issue written instructions not inconsistent with this Act.

(2) A copy of an instruction issued in terms of subsection (1) must promptly be submitted to the Committee.

**CHAPTER X  
FINANCIAL MISCONDUCT**

*Part 1*

*Disciplinary proceedings*

**Financial misconduct by accounting officer**

66. (1) The accounting officer commits an act of financial misconduct if the accounting officer intentionally or negligently -

- (a) contravenes a provision of this Act;
- (b) fails to comply with a duty imposed by a provision of this Act on the accounting officer; or
- (c) makes, permits or instructs another official of the Legislature to make an unauthorised, irregular or fruitless and wasteful expenditure.

(2) The Speaker must -

- (a) promptly investigate an allegation of financial misconduct against the accounting officer; and
- (b) if the investigation warrants such a step, institute disciplinary proceedings promptly and in accordance with applicable systems and procedures.

**Financial misconduct by officials**

67. (1) An official of the Legislature to whom a power or duty was delegated in terms of section 9, or who exercises financial management responsibilities in terms of section 10, commits an act of financial misconduct if that official intentionally or negligently -

- (a) fails to carry out the delegated power or duty;

- (b) contravenes or fails to comply with a condition of the delegated power or duty; or
  - (c) makes, permits or instructs another official of the Legislature to make, an unauthorised, irregular or fruitless and wasteful expenditure;
- (2) The accounting officer must –
- (a) investigate an allegation of financial misconduct against an official; and
  - (b) if the investigation warrants such a step, institute disciplinary proceedings within thirty days in accordance with applicable systems and procedures.

*Part 2*

*Criminal proceedings*

**Offences**

68. (1) It is an offence for the accounting officer to -
- (a) intentionally or negligently –
    - (i) contravene or fail to comply with a provision of section 6, 25(c), 29(2)(a) or (c), 30(2)(a), (b), (c) or (d), 32(2)(a), (b), (c), (d) or (f); -or
    - (ii) fail to take all reasonable steps to prevent unauthorised, irregular or fruitless and wasteful expenditure;
  - (b) contravene section 11(3)(b);
  - (c) fail to take all reasonable steps to prevent corrupt practices –
    - (i) in the management of the Legislature's assets or receipt of money; or
    - (ii) in the implementation of the Legislature's supply chain management system;
  - (d) intentionally mislead or withhold information from the Speaker or the Auditor-General on any bank account of the Legislature or on money received or spent by the Legislature; or
  - (e) intentionally provide false or misleading information in a document which in terms of a requirement of this Act must be submitted to the Speaker or Auditor-General.
- (2) It is an offence for an official –

- (a) to whom a power or duty is delegated in terms of section 9, to contravene or intentionally or negligently fail to comply with the delegation or a condition of the delegation;
  - (b) who exercises financial management responsibilities in terms of section 10, to intentionally or negligently fail to fulfil those responsibilities; or
  - (c) to contravene section 11(3)(b).
- (3) It is an offence for a person to contravene sections 43, 44, or 46.

### **Penalties**

69. A person convicted of an offence in terms of section 68 is liable to a fine or to imprisonment for a period not exceeding five years or both.

## **CHAPTER XI MISCELLANEOUS**

### **Liability of functionaries exercising powers and functions in terms of Act**

70. (1) The Speaker, accounting officer or any other official exercising a power or performing a function in terms of this Act, is not liable for loss or damage resulting from the exercise of that power or the performance of that function in good faith.

(2) Without limiting liability in terms of the common law or other legislation, the Legislature may recover from the accounting officer or other official, loss or damage suffered by it because of the intentional or negligent unlawful actions or omissions of that accounting officer or other official when performing a function in terms of this Act.

### **Repeal of legislation**

71. Section 28A of Northern Cape Powers and Privileges of the Provincial Legislature Act 3 of 1996, is hereby repealed.

**Short title and commencement**

72. This Bill is called the Northern Cape Provincial Legislature Financial Management Bill, 2009 and it comes into operation on a date determined by Proclamation by the Premier in accordance with the transitional arrangements set out in Schedule 3 to this Act.

## SCHEDULE 1

(Section 4(6))

### CODE OF ETHICS FOR THE SPEAKER

(1) The object of this Code is to enhance the confidence of the public and the members in the integrity of the management of the Legislature. It applies to the Speaker of the Legislature and supplements the Legislature's Code of Ethics. It recognises that in holding high public office the Executive Committee has an obligation to perform official functions and duties in a way that will bear the closest public scrutiny, an obligation that is not discharged by simply acting within the law.

(2) The Speaker must conform to the principles of good governance set out in this Schedule.

(3) The Speaker must –

(a) fulfil all the obligations placed upon him or her by the Constitution, the law and rules, regulations and policies of the Legislature;

(b) perform his or her duties and exercise powers with honesty and diligence and in accordance with the highest ethical standards;

(c) act in all respects in a manner that is consistent with the integrity of his or her office; and

(d) arrange his or her private affairs in a manner that will prevent real, potential or apparent conflict of interest from arising and, if such a conflict arise, resolve the conflict in favour of and in the interest of the Legislature and the public.

(4) The Speaker may not –

(a) use his or her position to enrich him or herself or improperly benefit any other person;

(b) expose him or herself to any situation that involves the risk of a conflict between official responsibility and private interest;

(c) receive remuneration for any work or service other than for the performance of his or her functions as Speaker; or

(d) use any allowance provided by the Legislature for a purpose other than that for which it was intended.

(5) A complaint concerning adherence to this Code must be directed to the Ethics Committee under the Standing Rules of the Legislature which oversees the Code of Ethics for members of the Legislature.

## SCHEDULE 2

(Section 39(f))

### MATTERS THAT MUST BE COVERED IN THE LEGISLATURE'S SUPPLY CHAIN MANAGEMENT SYSTEM

The Legislature's supply chain management system must cover at least the following matters –

- (a) the range of supply chain management processes that the Legislature may use, including tenders, quotations, auctions and other types of competitive bidding;
- (b) when the Legislature may or must use a particular type of process;
- (c) procedures and mechanisms for each type of process;
- (d) procedures and mechanisms for more flexible processes where the value of a contract is below a prescribed amount;
- (e) open and transparent pre-qualification processes for tenders or other bids;
- (f) competitive bidding processes in which only pre-qualified persons may participate;
- (g) bid documentation, and the advertising of and invitations for contracts;
- (h) procedures and mechanisms for –
  - (i) the opening, registering and recording of bids in the presence of interested persons;
  - (ii) the evaluation of bids to ensure best value for money;
  - (iii) negotiating the final terms of contracts; and
  - (iv) the approval of bids;
- (i) screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed value;
- (j) compulsory disclosure of any conflict of interest prospective contractors may have in specific tenders;
- (k) the circumstances in which prospective contractors may be excluded from being considered for any contract on account of a conflict of interest;
- (l) the consequences of failing to disclose conflict of interest in accordance with the system;
- (m) participation in the supply chain management system of persons who are not officials of the Legislature or in the employ of the State;



(n) the barring of persons from participating in tendering or other bidding processes, including persons –

(i) convicted for fraud, corruption or any other crime involving dishonesty in the previous five years;

(ii) who wilfully breached a contract with an organ of state during the previous five years; or

(iii) whose tax matters are not cleared by the South African Revenue Service;

(o) measures for –

(i) combating dishonesty, favouritism and unfair and irregular practices in supply chain management; and

(ii) promoting ethics of officials of the Legislature and others involved in supply chain management;

(p) the invalidation of recommendations or decisions that were made, taken or in any way influenced by –

(i) members of the Legislature in contravention of this Act or any applicable code of ethics for members of the Legislature;

(ii) officials of the Legislature in contravention of this Act or any applicable code of conduct for officials of the Legislature;

(q) the procurement of goods and services by the Legislature through contracts procured by other organs of state;

(r) contract management and dispute settling procedures;

(s) the delegation of the Legislature's supply chain management powers and duties to officials of the Legislature; and

(t) the circumstances in which a contract or agreement procured through the supply chain management system of the Legislature may be amended by the parties.

### SCHEDULE 3

*(Section 72)*

#### TRANSITIONAL ARRANGEMENTS

- (1) Section 13 and those parts of other sections of this Act that refer to the strategic plan come into effect on the date of the first elections for the Legislature after the Act comes into effect.
- (2) Sections 14 to 19, 21, 22 and 50 to 61 come into effect at the start of the first financial year after this Act comes into effect.
- (3) Until such time as a provision contemplated by items (1) and (2) of this Schedule comes into effect, the Legislature must continue to comply with applicable requirements of the PFMA and its regulations.
- (4) Until such time as a regulation that must be made in terms of this Act comes into force, policies, regulations or rules concerning the subject-matter of such regulation, remain in force.
- (5) If, when this Act comes into effect, there is no performance agreement for the accounting officer as required in terms of section 7, an agreement must be concluded within a month.
- (6) After this Act comes into effect, no powers or duties may be delegated until the system of delegation anticipated in section 9 is adopted; except -
  - (a) officials exercising powers or performing duties delegated to them by the accounting officer before this Act came into effect may continue to do so; and
  - (b) if a power or duty was delegated to the holder of an office in the Legislature before this Act came into effect, the holder of that office and a future holder of the office may continue to exercise the power or perform the duty.
- (7) Sections 39, 40 and 41 come into effect when the regulations that sections 39 and 41 anticipate are made in terms of section 64.
- (8) Regulations required by this Act must be made within a reasonable time of this Act coming into effect.

**NOTICE 137 OF 2009**

**NORTHERN CAPE PROVINCIAL LEGISLATURE**

**NORTHERN CAPE PROVINCIAL LEGISLATURE SERVICE  
BILL, 2009**

The Northern Cape Provincial Legislature Service Bill, 2009, contained in this Notice, is hereby published for public comment. **Written representation** may be made to the Northern Cape Provincial Legislature and must be directed to:

Adv HJ Botha  
Legal Department  
Northern Cape Provincial Legislature  
Private Bag X5066  
Kimberley  
8300  
Fax: 053 839 8094  
Tel: 053 839 8020  
E-mail: [hbotha@leg.ncape.gov.za](mailto:hbotha@leg.ncape.gov.za)

no later than 30 November 2009.

**SJK LEGODI  
SECRETARY**

## BILL

To provide for the Legislature Service; the responsibilities, powers and functions of the Speaker; the appointment, responsibilities and conditions of service of the Secretary and employees of the Service; to repeal the Northern Cape Provincial Legislature Service Act, 1995 (Act 6 of 1995); and to provide for matters incidental thereto.

## PREAMBLE

WHEREAS the Northern Cape Provincial Legislature derives its mandate from section 114 of the Constitution;

AND WHEREAS members of the Provincial Legislature needs administrative support to fulfil such mandate;

**BE IT THEREFORE ENACTED** by the Northern Cape Provincial Legislature, as follows: -

### ARRANGEMENT OF SECTIONS

#### CHAPTER I

##### DEFINITION, APPLICATION AND ESTABLISHMENT OF SERVICE

1. Definitions
2. Application
3. Service
4. Responsibilities, powers and functions of Speaker

#### CHAPTER II SECRETARY

5. Appointment of Secretary or acting Secretary
6. Term of office of Secretary and acting Secretary
7. Responsibilities, powers and functions of Secretary
8. Assignment of powers and duties by Secretary
9. Removal from office of Secretary

#### CHAPTER III ORGANISATION AND EMPLOYEES OF SERVICE

10. Composition of Service
11. Appointment of senior manager and other employees
12. Responsibilities of senior officials
13. Appointment of employee in acting position
14. Probation
15. Termination of employment
16. Absenteeism

17. Procedure for misconduct, suspension, termination of service and appeal

**CHAPTER IV  
OBLIGATIONS RIGHTS AND PRIVILEGES OF EMPLOYEES**

18. Rights and obligations
19. Cession of emoluments
20. Grievances of employees
21. Other work by employees
22. Declaration of interest

**CHAPTER V  
GENERAL**

23. Delegation
24. Regulations
25. Policies
26. Saving
27. Repeal of legislation
28. Short title and commencement

**CHAPTER I**

**Definitions**

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

“**accounting officer**” means the Secretary as referred to in section 7(1);

“**acting Secretary**” means a person appointed in terms of section 5(5) (b);

“**conditions of service**” means conditions of service contained in this Act or any policy as contemplated in section 25;

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

“**department**” means a department of the Service consisting of a cluster of functionally related sections for operational and reporting purposes;

“**division**” means a cluster of functionally related departments for operational and reporting purposes;

“**employee**” means a person as contemplated in section 10(5);

“**fixed establishment**” means the posts which have been created in terms of section 10(3) for the requirements of the Service;

“*Gazette*” means the official provincial *Gazette*;

“**House**” means the Legislature meeting in a plenary sitting as defined in the Standing Rules;

“**Legislature**” means the Northern Cape Provincial Legislature as contemplated in section 104 of the Constitution;

“**member**” means a member of the Provincial Legislature, including the Premier and a Member of the Executive Council;

“**policy**” means a policy in terms of section 25 of the Act;

“**prescribe**” means prescribe by regulation in the *Gazette* and “**prescribed**” has a similar meaning;

“**recess**” means with reference to the Legislature, a period determined as a recess by the Programme Committee, or by a resolution of the House, during which the business of the Legislature is interrupted, often referred to as constituency period or leave period;

“**regulations**” means the regulations made in terms of section 24 of this Act;

“**remuneration**” means the total emoluments payable to an employee, and it may include basic salary, remunerative allowances or other rewards, the Service’s contribution to a pension fund and a medical aid fund and any other fringe benefits;

“**role playing position**” means a person appointed on a fixed term contract in the office of the Speaker or Deputy Speaker for a period that coincides with the term of that office;

“**Rules Committee**” means the Rules Committee established in terms of the Standing Rules;

“**Secretary**” means the Secretary to the Legislature appointed in terms of section 5(1);

“**section**” means positions with functionally similar tasks grouped together for operational and reporting purposes;

“**senior manager**” means a person who is the head of a department;

“**senior official**” means an official who is the head of a division, a department or a section;

“**Service**” means the Legislature Service established in terms of section 3;

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

“**Standing Rules**” means the Standing Rules of the Northern Cape Provincial Legislature made in terms of section 116 of the Constitution;

“**this Act**” includes regulations made in terms thereof;

“**working day**” means a day of the week except -

- (a) Saturday and Sunday; and
- (b) a public holiday in terms of the Public Holidays Act, 1994 (Act 36 of 1994);

#### **Application**

- 2. (1) This Act applies to employees as contemplated in section 10(5), except where it is inconsistent with the context or clearly inappropriate.
- (2) This Act applies to members in as far as there are specific powers, responsibilities and obligations bestowed on the Speaker and the Rules Committee.

#### **Service**

- 3. There is a Service to provide administrative support to the Legislature and its members to fulfil the respective responsibilities in accordance with the provisions of the Constitution.

#### **Responsibilities, powers and functions of Speaker**

- 4. The Speaker is the political head and is as such responsible to oversee -
  - (a) all matters connected with the business of the Legislature;
  - (b) the administration and implementation of the Standing Rules;
  - (c) administrative services to the Rules Committee, other committees of the Legislature and members;
  - (d) general day to day operations of the legislature;
  - (e) compliance with all legislation that impacts on the administration and finances of the Legislature; and
  - (f) the development and implementation of policies for the Legislature.

**CHAPTER II  
SECRETARY**

**Appointment of Secretary or acting Secretary**

5. (1) The Speaker in consultation with the Rules Committee must –
- (a) nominate a suitable person who must be appointed by a resolution adopted by the Legislature as Secretary for a five year period on a performance agreement as envisaged in relevant financial legislation, or for another period as envisaged by section 6;
  - (b) in the event of a vacancy in the position of Secretary, appoint a senior manager as acting Secretary, who holds office as Secretary until an appointment is made in terms of paragraph (a).
- (2) The Secretary may in the event of his or her temporary absence, in writing appoint a senior manager to perform the functions of that office and must inform the Speaker in writing thereof.
- (3) The Speaker must, when the Secretary is absent and has not appointed a senior manager to act in his or her stead or is otherwise unable to perform his or her functions, appoint a senior manager to act in that position.
- (4) An acting Secretary in terms of subsection (1)(b) has the responsibilities, and must exercise the powers and perform the functions of the Secretary.
- (5) An acting Secretary in terms of subsection (2) or (3) has the responsibilities and must exercise the powers and perform the functions as may be delegated or assigned by the Secretary or the Speaker respectively.

**Term of office of Secretary and acting Secretary**

6. (1) A person who is appointed as Secretary occupies that office in a full-time capacity for a period of five years, or such shorter period as the Speaker in consultation with the Rules Committee, approves.
- (2) An acting Secretary, in terms of section 5(1)(b), occupies that office for the unexpired portion of the



term of the Secretary for which he or she was appointed to act or such shorter period as the Speaker in consultation with the Rules Committee determines.

#### **Responsibilities, powers and functions of Secretary**

7. (1) The Secretary subject to relevant financial legislation, is the accounting officer and he or she fulfills the duties, responsibilities and obligations of such office.
- (2) The Secretary performs all functions delegated to him or her in terms of this Act or other legislation.
- (3) The Secretary reports to the Speaker on all matters, as and when required.

#### **Assignment of powers and duties by Secretary**

8. (1) The Secretary may subject to subsection (2) and a limitation in terms of any other legislation, delegate a power or duty conferred or imposed on him or her by this Act to a senior official or other employee.
- (2) A delegation to an official in terms of subsection (1) –
  - (a) must be in writing;
  - (b) is subject to a limitation or condition in terms of any applicable legislation or as the Speaker may impose;
  - (c) is subject to any limitation or condition the Secretary may impose;
  - (d) may either be to a specific individual or to the holder of a specific post on the establishment of the Service;
  - (e) does not divest the Secretary of the responsibility or accountability concerning the exercise of the delegated power or the performance of the assigned duty;
  - (f) does not prohibit the Secretary from exercising the delegated power himself or herself; and
  - (g) may at any time in writing be withdrawn or amended by the Secretary.
- (3) The Secretary may confirm, vary or revoke a decision taken by an official as a result of a delegation or instruction in terms of subsection (1) subject to any right that has become vested as a consequence of that decision.

### **Removal from office of Secretary**

9. (1) The Speaker in consultation with the Rules Committee must with due observance of the Labour Relations Act, 1995 (Act 66 of 1995), recommend the removal of the Secretary from office to the House.
- (2) A Secretary may be removed from office on the grounds as set out in section 15(2).
- (3) The Secretary must be removed from office by a resolution adopted by the House.
- (4) A Secretary who has been dismissed may exercise his or her right of appeal externally as provided for in the Labour Relations Act, 1995 (Act 66 of 1995).

### **CHAPTER III ORGANISATION AND EMPLOYEES OF SERVICE**

#### **Composition of Service**

10. (1) The Service structure consists of divisions, departments and sections as determined from time to time.
- (2) Each division, department or section has a head who as an employee, is the incumbent of the position on the fixed establishment.
- (3) The Speaker must recommend to the Rules Committee all positions required to give effect to the Service's responsibilities in terms of this Act.
- (4) The Rules Committee must approve the fixed establishment of the Service.
- (5) An employee is a person appointed –
  - (a) permanently on the fixed establishment of the Service;
  - (b) on a fixed term contract on the establishment of the Service; or
  - (c) in a role-playing position in the office of the Speaker or Deputy Speaker.

#### **Appointment of senior manager and other employees**

11. (1) The Speaker must after consultation with the Rules Committee, subject to applicable employment policy, approve the appointment of a senior manager.

- (2) The Secretary must, subject to applicable employment policy, recommend to the Speaker for his or her approval, the appointment of all other employees to provide services for the proper functioning of the Legislature.
- (3) A senior manager must enter into a performance agreement with the Legislature on acceptance of his or her appointment, and thereafter, within one month after the start of each financial year.
- (4) The performance agreement must among other things –
  - (a) set appropriate performance indicators;
  - (b) set measurable performance targets, and
  - (c) determine a mechanism to measure performance.

#### **Responsibilities of senior officials**

12. A senior official -
  - (a) who is responsible for the efficient management and administration of his or her area of responsibility, including the effective utilization and training of employees, the maintenance of discipline, the promotion of sound labour relations, the proper use and care of property of the Legislature and the performance of any responsibility as set out in this Act, other relevant legislation or policies; and
  - (b) may direct any employee under his or her control to temporarily perform duties other than those ordinarily assigned to such an employee or appropriate to the level, designation or classification of his or her post, and the employee must comply with such a directive.

#### **Appointment of employee in acting position**

13. In the event that a senior official is absent or unable to fulfill the duties of that office, or during a vacancy in such office, the Secretary may, in writing, appoint a suitable employee to act in the said office.

#### **Probation**

14. The appointment of all employees, including that of the Secretary or acting Secretary is made on probation as set out in a policy or the regulations.

### Termination of employment

15. (1) The power to dismiss an employee vests in the Secretary, which power must be exercised with due observance of the applicable provisions of the Labour Relations Act, 1995 (Act 66 of 1995).
- (2) An employee's including the Secretary's employment may be terminated-
- (a) on account of continued ill-health;
  - (b) owing to the abolition of his or her post or a reduction in or reorganization or readjustment of departments or offices;
  - (c) if, for reasons other than his or her own unfitness or incapacity, his or her dismissal will promote efficiency or economy in the department or office in which he or she is employed, or will be in the interest of the Service;
  - (d) on account of unfitness for his or her duties or incapacity to carry them out efficiently;
  - (e) on account of misconduct in terms of a disciplinary policy or the regulations;
  - (f) if, in the case of an employee appointed on probation, his or her appointment is not confirmed;
  - (g) on account of his or her misrepresentation in relation to a condition for permanent appointment;
  - (h) if his or her continued employment constitutes a security risk for the State; or
  - (i) any other action or conduct that impairs the relationship between the employee and the employer.

### Absenteeism

16. (1) An employee who absents himself or herself from his or her official duties without permission of the senior official he or she reports to, for a period which exceeds 7 consecutive working days, is deemed to have been automatically discharged from the Service on account of such absenteeism with effect from the date immediately succeeding his or her last day of attendance at his or her place of duty.
- (2) If such an employee assumes other employment, he or

she is deemed to have been discharged from the Service, irrespective of whether the period has expired or not.

- (3) If an employee who is deemed to have been so discharged from the Service, reports for duty at any time after the expiry of the period referred to in subsection (1), the Speaker may, on good cause shown and notwithstanding anything to the contrary contained in any law, approve the reinstatement of that employee in the Service in his or her former or any other position.
- (4) An employee who whilst disciplinary steps are taken against him or her has not yet been disposed of, resigns or without permission of the employer assumes employment in another position or becomes self-employed in any way, is deemed to have been absent and is dismissed from the Service on account thereof.

#### **Procedure for misconduct, suspension, termination of service and appeal**

17. Misconduct, suspension, termination of service and appeal procedure must be dealt with in accordance with the procedure set out in a policy or the regulations.

### **CHAPTER IV OBLIGATIONS RIGHTS AND PRIVILEGES OF EMPLOYEES**

#### **Rights and obligations**

18. An employee must fulfill the obligations imposed upon him or her by this Act or any other law, and he or she has the rights and may be granted the privileges under this Act or any other law.

#### **Cession of emoluments**

19. No employee may without written approval of the Secretary, cede the right to the whole or a part of a salary or allowance payable to him or her.

#### **Grievances of employees**

20. An employee has the right to have his or her complaint or grievance concerning an official act or omission investigated and considered in terms of the procedure set out in a policy or the regulations.

### Other work by employees

21. Unless otherwise provided for in his or her conditions of service –
- (a) every employee must place the whole of his or her time at the disposal of the Service;
  - (b) no employee who is employed permanently on the fixed establishment may perform or engage himself or herself to perform remunerative work outside his or her employment in the Service without permission granted in the event of –
    - (i) a senior official, by the Speaker;
    - (ii) any other employee, by the Secretary; and
  - (c) no employee may claim any additional remuneration in respect of any official duty or work, which he or she performs voluntarily or is required by a competent authority to perform.

### Declaration of interest

22. The Secretary and all employees must declare interest in accordance with a policy or the regulations.

## CHAPTER V GENERAL

### Delegation of powers and duties to Secretary

23. (1) The Speaker may –
- (a) delegate to the Secretary any power (with the exception of the power to regulate in terms of section 24) conferred on the Speaker by this Act; or
  - (b) authorise the Secretary to perform any duty imposed on the Speaker by this Act.
- (2) The Secretary must exercise such power or perform such duty subject to the conditions that the Speaker considers appropriate.
- (3) Any delegation of a power or authorization to perform a duty in terms of this section –
- (a) must be in writing;
  - (b) does not prevent the Speaker from exercising that power or performing that duty himself or herself; and

- (c) may at any time be withdrawn in writing by the Speaker.

### Regulations

24. (1) The Speaker must in concurrence with the Rules Committee make regulations which are not inconsistent with this Act or any other legislation regarding any matter required to be prescribed under this Act.
- (2) The Speaker may in concurrence with the Rules Committee make regulations which are not inconsistent with this Act or other legislation regarding generally any matter which he or she deems necessary or expedient to prescribe for the better administration of this Act.
- (3) Regulations must be published in the *Gazette*.

### Policies

25. (1) The Secretary oversees the development of policies required in terms of or advantageous for the administration of this Act, as well as policies for the Service in general.
- (2) The Speaker approves policies, subject to a proper consultative process having been followed in the Service.
- (3) The Speaker may refer a policy to the Rules Committee for consideration and approval.
- (4) Policies may be published in the *Gazette*.

### Saving

26. (1) Anything done for or on behalf of the Service and a person appointed as an employee of the Legislature before the commencement of this Act, must be deemed to have been done or such person to have been appointed in terms of the provisions of this Act.
- (2) An approved policy at date of commencement of this Act, shall remain in force in so far as it is not inconsistent with this Act, until its repeal or amendment.

**Repeal of legislation**

27. The Northern Cape Provincial Legislature Service Act, 1995 (Act 6 of 1995) is hereby repealed as a whole.

**Short title and commencement**

28. This Act is called the Northern Cape Provincial Legislature Service Act, 2009 and comes into operation on a date determined by the Premier by proclamation in the *Gazette*.
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