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GENERAL NOTICE

NOTICE 322 OF 2009

The Draft Financial Management of the Eastern Cape Provincial Legislature Bill is hereby published for public comment.

All comments must be in writing and sent or faxed to the following address within 14 days of the date of publication hereof:

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PROVINCE OF THE EASTERN CAPE

**FINANCIAL MANAGEMENT OF THE
EASTERN CAPE PROVINCIAL
LEGISLATURE BILL**

As Introduced

B -2009(EC)

(RULES COMMITTEE)

**FINANCIAL MANAGEMENT OF THE EASTERN CAPE PROVINCIAL
LEGISLATURE BILL, 2009**

BILL

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

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PREAMBLE

Recognising -

that the Legislature must be governed by the democratic values and principles in the Constitution

Therefore 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;**
- **ensure the transparent, accountable and sound management of the revenue, expenditure, assets and liabilities of the Legislature;**

BE IT THEREFORE ENACTED by the Provincial Legislature of the Province of the Eastern Cape as follows -

CHAPTER 1

INTERPRETATION AND OBJECTS

Definitions

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

“Accounting Officer” means the Secretary to the Legislature, and includes, where appropriate, a person acting as Secretary, duly appointed by the Executive authority in terms of section 4;

“annual provincial budget” means the annual provincial budget referred to in section 27(2) of the Public Finance Management Act;

“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 on a provincial appropriation Act; and
- (b) approved from the Legislature’s own funds in terms of section 15(2)(b);

“Budget and Oversight Committee” means a committee of the Legislature responsible for oversight in terms of this Act;

“Executive Authority” means the Speaker of the Legislature;

“financial year” means a year ending 31 March;

“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 provincial legislature of the Province of the Eastern Cape

“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 Finance in the province;

“month” means a calendar month;

"official" means an employee of the Legislature or any other person to whom any function is delegated in terms of this Act;

"overspending"—

- (a) in relation to the approved budget of the Legislature means causing expenditure to exceed the amount appropriated and approved for the approved 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;

"person in the employ of the state" means

- (a) a member of the board of directors of any municipal entity;
- (b) an official of any municipality or municipal entity;
- (c) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act;
- (d) a member of the accounting authority of any national or provincial public entity; or
- (e) an employee of The Legislature or a provincial legislature;

"political parties" means political parties represented in the Legislature;

"prescribed" means prescribed by regulation in accordance with section 64;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"quarter" means any of 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;

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

“this Act” includes regulations issued in terms of section 65 and Schedules to the 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 this 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 Public Finance Management Act; 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 adjustments budgets of the Legislature ;
 - (ii) information on the proposed annual budget and adjustments budgets of the Legislature for inclusion in the provincial annual budget and adjustments budgets; 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.

CHAPTER 2

OVERSIGHT, EXECUTIVE AUTHORITY AND ADMINISTRATION OF ACT

Part 1: Budget and Oversight Committee

The Budget and Oversight Committee

3. (1) A Budget and Oversight Committee must maintain oversight of the financial management of the Legislature by among other things –
- (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 Executive Authority in terms of this Act;
 - (c) considering the annual report submitted to the Legislature in terms of section 59; and

- (d) performing any other functions specified in this Act or by the Rules of the Legislature, or consistent with the objects of this Act.
- (2) Representation on the Committee must be in accordance with the Rules of the Legislature except that the Speaker and the Deputy Speaker –
 - (a) may not be members of the Committee; and
 - (b) may only participate in the deliberations of the Committee at the request of the Committee.
- (3) The Committee may require the Accounting Officer or any other official of the Legislature to appear before it.
- (4) The Committee has the powers that committees of the Legislature have under section 115 of the Constitution and the Standing Rules of the Legislature.

Part 2: Executive Authority

Executive Authority

- 4. (1) The Speaker of the Legislature is the Executive Authority of the Legislature.
- (2) The Executive Authority is responsible for the treasury functions in respect of the Legislature.
- (3) The Executive Authority is accountable to the Legislature for the effective and efficient financial management of the Legislature.
- (4) The Executive Authority appoints the accounting officer
- (5) The Executive Authority must act in accordance with the Code of Ethics in Schedule 1.

Part 3: Administration of Act

Accounting Officer

- 5. (1) The Secretary to the Legislature is the Accounting Officer of the Legislature.
- (2) The Accounting Officer is accountable to the Executive Authority for the financial management of the Legislature.

General financial management functions

6.(1) 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 any employee of the Legislature who has allegedly committed an act of financial misconduct; and
- (i) when appropriate, criminal proceedings are initiated against any person who has allegedly committed an offence in terms of section 68.

Performance of Accounting Officer

7. (1) The Executive Authority and the Accounting Officer must conclude a written performance agreement for the Accounting Officer annually.

- (2) The performance agreement referred to in subsection (1) must –
 - (a) be concluded within a reasonable time after the Accounting Officer is employed and thereafter within one week 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 Executive Authority; and
- (d) specify the consequences of sub-standard performance.

(3) The provisions of this Act conferring responsibilities on the Accounting Officer are part of the performance agreement of an Accounting Officer.

(4) 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. (1) If the Accounting Officer is unable to perform the functions of the post for a period of fourteen days or less, those functions must be performed by another official designated in writing by the Accounting Officer.

(2) If the post of Accounting Officer is vacant, or if the Accounting Officer is unable to perform the functions of the post for a period of more than 14 days, those functions must be performed by another official designated in writing by the Executive Authority.

Delegation of authority and duties by Accounting Officer

9. (1) The Accounting Officer may delegate any authorities or duties conferred on the Accounting Officer by this Act to an official of the Legislature in accordance with a system of delegation.

(2) The Accounting Officer must develop the system of delegation in consultation with the Executive Authority 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 any of those delegations.

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

- (a) must be in writing;
- (b) is subject to any limitations and conditions 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 power 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 power or the performance of the delegated duty.

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

Responsibilities of officials

10. Every official must –

- (a) comply with the provisions of this Act, to the extent applicable to that official;
- (b) comply with the terms of any 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 other officials with responsibility under this Act must –

- (a) act with fidelity, honesty, integrity and in the best interests of the Legislature in managing its financial affairs;
 - (b) disclose all material facts which are available to that person or reasonably discoverable, and which in any way might influence any decision or action in terms of this Act; and
 - (c) seek to prevent any prejudice to the financial interests and good reputation of the Legislature.
- (2) For the purposes of subsection 1(b), any disclosure must be made –
- (a) in the case of the Accounting Officer to the Executive Authority; and
 - (b) in the case of any other person, to the Accounting Officer.
- (3) No person having any responsibility under this Act –
- (a) may act in a way that is inconsistent with the Act; or
 - (b) may use their position or any confidential information obtained in the exercise of their responsibilities for personal gain or to benefit improperly themselves or any other person.

CHAPTER 3

PLANNING AND BUDGETING

Preparation of strategic plan, annual performance plan and budget

12. The Executive Authority must –
- (a) oversee the preparation of the Legislature's strategic plan, annual performance plan, budget and adjustments budgets 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 of the Legislature, prepare and present to the Executive Authority a draft strategic plan for the Legislature.
- (2) The strategic plan for the Legislature's administration must –

- (a) cover the following five years or other period determined by the Legislature;
- (b) specify the priorities of the Legislature's administration 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 the administration's performance in implementing the strategic plan.

Annual performance plan

14. (1) The Accounting Officer must, within ten months prior to the start of the financial year, prepare a draft annual performance plan for the Legislature and present it to the Executive Authority.

- (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 being given;
 - (ii) the purposes of the projects; and
 - (iii) performance measures and indicators for assessing the Legislature's performance in achieving the purposes of the projects.

Annual Budget

15. (1) The Accounting Officer must, within ten months prior to the start of the financial year, prepare a draft budget for the Legislature and present it to the Executive Authority.

(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;
 - (ii) funds that are a direct charge against the Provincial Revenue Fund;and
 - (iii) funds derived from the Legislature's own revenue sources, excluding donor funds;
- (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 Executive Authority must table in the Legislature, for referral to the Committee –

- (a) the draft strategic plan of the Legislature, within ten working days of receiving it from the Accounting Officer;

- (b) the draft annual performance plan and draft budget, at least one month before the draft budget must be submitted to the Provincial Treasury;
 - (c) the draft adjustments budget, at least one month before the adjustments budget must be submitted to the Provincial Treasury; and
 - (d) any draft revisions to the approved allocations of the Legislature's own funds.
- (2) The Executive Authority must –
- (a) after consultation with the MEC, determine a process for submitting the Legislature's budget and adjustments budget to the Provincial Treasury;
 - (b) determine the budget of the Legislature after consultation with the MEC before the budget and adjustment budgets are finalised and the provincial budget is introduced;
 - (c) submit the budget and adjustments budget to the Provincial Treasury; and
 - (d) represent the Legislature and agree with the MEC on the budget allocation of the Legislature in terms of the Standing Rules of the Legislature, or on any aspect of the Legislature's budget or adjustments budget.

Annual appropriations and approvals

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

- (a) appropriate funds contemplated in section 16(2)(b)(i) in the annual provincial budget; and
 - (b) approve the use of the funds contemplated in section 15(2)(b)(iii).
- (2) Any revision of an appropriation in terms of subsection (1)(a) must be made –
- (a) by a provincial adjustments budget referred to in section 31 of the Public Finance Management Act; and
 - (b) in accordance with the procedure set out in section 16(2).
- (3) Any revision of an approval in terms of subsection (1)(b) must be approved by the Legislature.

Expenditure before the Legislature's 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) Any unauthorised expenditure that the Legislature does not approve must be recovered from the person responsible for the unauthorised expenditure.

Unauthorised expenditure of donor funds

20. (1) Any unauthorised expenditure of donor funds that the Legislature approves becomes a charge against the Legislature's own funds.

(2) Any unauthorised expenditure of donor funds that the Legislature does not approve must be recovered from the person responsible for the unauthorised expenditure.

Virement between main divisions within the 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 Executive Authority directs otherwise.

(2) The Accounting Officer must obtain the written permission of the Executive Authority to defray excess expenditure contemplated in subsection (1) from the savings of an amount –

- (a) specifically and exclusively appropriated or approved for a purpose mentioned under a main division within the approved budget;
- (b) appropriated or approved for transfer to another institution; or
- (c) 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 Executive Authority may make regulations or issue instructions in accordance with sections 64 and 65 respectively concerning the application of this section.

Treatment of unspent funds

22. (1) The Legislature is not required to return to the Provincial Revenue Fund any 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 their 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 within the following two financial years in accordance with section 17(1)(b).

CHAPTER 4

CASH MANAGEMENT AND INVESTMENT

Cash management and investment policy

23. (1) The Executive Authority must prescribe in accordance with section 64 an appropriate policy —

- (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 policy prescribed in terms of subsection (1).

Opening of bank accounts

24. (1) The Accounting Officer, with the approval of the Executive Authority, and in accordance with the policy referred to in section 23, must open and maintain—

- (a) a bank account into which all money 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. (1) The Accounting Officer —
- (a) must administer all of the Legislature's bank accounts;
 - (b) is accountable to the Executive Authority 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 power has been delegated in terms of section 9, may withdraw money, or authorise the withdrawal of money, from any of the Legislature's bank accounts.
- (2) A delegation in terms of subsection (1) must be in accordance with the policy 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 Executive Authority; or
- (e) cash management or investment purposes in accordance with the policy made in terms of section 23.

Restrictions on borrowing, guarantees and other transactions

27 (1) The Legislature may not –

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

(2) Neither the state nor the Legislature is bound by a loan, 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 any 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.

Requisitioning of funds by Accounting Officer

28. The Executive Authority must, after consultation with the MEC, determine a process for requisitioning appropriated funds that provides for sound cash-flow management.

CHAPTER 5

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.

Revenue management

- 30 .(1) he Accounting Officer is responsible for managing the revenue of the Legislature.
- (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 in accordance with a policy prescribed in accordance with section 64.

(3) Interest must be charged on any debt owed to the Legislature in accordance with a policy prescribed in section 64.

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) The Executive Authority must make regulations concerning the allocation and use of any funds provided by the Legislature to political parties or to Members of the Legislature.

(2) Before making regulations in terms of subsection (1), the Executive Authority must consult with the political parties.

(3) 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) prescribe 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.

(4) 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) any outstanding audit reports on the use of the Legislature funds by the political party or Member; and
 - (iii) any 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.

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

Transfers

34 .(1) Before transferring any funds from the Legislature to any other entity, the Accounting Officer must –

- (a) obtain a written assurance from the entity 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) to transfers to entities in other countries or to international institutions.
 - (b) Any transfer contemplated by subparagraph (a) is governed by the instrument regulating the relationship between South Africa and that entity 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) directive by the Executive Authority that has financial implications must –

- (a) be in writing; and
- (b) 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 Executive Authority 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 Executive Authority 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 Executive Authority that may have financial implications, unless the Accounting Officer issues a written instruction to proceed with implementation.

(5) The Executive Authority 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 interests 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 Executive Authority instructs the Accounting Officer to proceed with the implementation of a directive contemplated in subsection (2), the Executive Authority 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 Executive Authority -

- (i) any 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 Executive Authority to prevent or rectify such shortfalls or overspending.

CHAPTER 6

SUPPLY CHAIN MANAGEMENT

Application of this Chapter

38. (1) 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 policy

39. (1) The Executive Authority must prescribe in accordance with section 64 a supply chain management policy 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 interests;
- (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; and

- (vi) regular assessment of supply chain performance; and
- (e) complies with other applicable legislation.¹

Implementation of supply chain management policy

40. (1) The Accounting Officer must –

- (a) implement the supply chain management policy;
- (b) take all reasonable steps to ensure that proper mechanisms are in place to minimise dishonesty, favouritism and unfair and irregular practices;
- (c) ensure that contracts concluded for the supply of services and goods are properly enforced;
- (d) monitor the performance of contractors; and
- (e) regularly report to the Executive Authority on–
 - (i) the management of contracts and the performance of contractors; and
 - (ii) the implementation of the policy.

Unsolicited offers

41. (1) The Executive Authority may prescribe a policy in accordance with section 64 for considering offers to supply goods or services that are unsolicited or are made otherwise than in accordance with the supply chain management policy contemplated in section 39.

(2) The Accounting Officer-

- (a) is not obliged to consider any offer contemplated in subsection (1); and
- (b) may consider an offer contemplated in subsection (1) only in accordance with the prescribed policy.

Tenders not recommended

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

¹ 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]

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

Members of the Legislature barred from serving on tender committees

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 any meeting of such committee as an observer; or
- (c) participate in any other way 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 any 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 Member of parliament or a member of the cabinet;
- (b) a Member of the provincial legislature or a Member of the Executive Council;
- (c) a Municipal Councillor
- (d) a person in the employ of the State whose participation in bidding for the contract may result in a conflict of interest; or
- (e) any entity in which a person mentioned in paragraphs (a) to (d) is a Director or has a controlling or other substantial interest.

CHAPTER 7
AUDIT COMMITTEE AND INTERNAL AUDIT UNIT

Establishment of audit and advisory committee

46. (1) The Legislature must have an audit and advisory committee appointed by the Executive Authority, after consultation with the Accounting officer.

(2) The audit and advisory 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 and advisory committee must be individuals who–

- (a) are not employed by the Legislature or the state and are not Members of The Legislature, a provincial legislature, or a Municipal Council; and
- (b) have no personal or financial interest in any matter related to the Legislature.

(4) The Executive Authority 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) Subject to subsection (6), the terms of appointment and remuneration of members of the audit and advisory 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 and advisory committee who has a personal or financial interest in any matter before that committee must disclose that interest to that committee and withdraw from the proceedings when that matter is considered.

Functions of audit and advisory committee

47. (1) The audit and advisory committee must –
- (a) in consultation with the internal auditors, establish an audit charter to –
 - (i) guide its audit approach and 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, or the Executive Authority;
 - (c) advise the Executive Authority on any matter submitted by the Executive Authority.
 - (d) in the annual report of the Legislature, comment on –
 - (i) the effectiveness of internal control;
 - (ii) the quality of financial management and any reports compiled by the Accounting Officer in terms of this Act; and
 - (iii) the quality of the annual financial statements;
 - (e) report to and advise the Accounting Officer and the Executive Authority on matters relating to the financial and risk management of the Legislature; and
 - (f) communicate any concerns it deems necessary to the Executive Authority and the Auditor-General.
- (2) In performing its functions, the audit and advisory 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 Executive Authority 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 8
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 Executive Authority and Provincial Treasury, in a format determined by the Executive Authority, 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) any material variances from the Legislature's projected revenue by source, and from the Legislature's expenditure projections by main division; and
 - (ii) any 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 any 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 Executive Authority on the Legislature's performance in implementing the annual performance plan in that quarter.

Mid-year budget and performance assessment

52. (1) The Accounting Officer must, before 31 October of each year, submit to the Executive Authority a report that assesses the performance of the Legislature's administration during the first half of the financial year, taking into account –
- (a) the monthly statements 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 adjustments budget may be necessary; and
 - (b) revise projections for revenue and expenditure to the extent that this may be necessary.

Submission of reports to the Committee

53. (1) The Executive Authority 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's administration during the financial year to which the report relates;
 - (b) provide a report on performance of the Legislature's administration; and
 - (c) promote accountability for decisions made during the year by the Legislature's administration.
- (3) The annual report must be based on the annual performance plan and must contain

- (a) the annual financial statements of the Legislature for the relevant financial year as submitted to the Auditor-General;
- (b) any 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 any corrective action taken or to be taken in response to issues raised in the audit report referred to in paragraph (c);
- (f) the audit committee's report; and
- (g) any other prescribed 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 prescribed by the Executive Authority for the purpose of maintaining consistency with other organs of state.

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

- (a) include particulars of the remuneration of the Accounting Officer and senior managers, whether financial or otherwise;
- (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;
- (c) provide a summary of all investments of the Legislature as at the end of the financial year; and
- (d) provide particulars of—
 - (i) all unauthorised expenditure that occurred during the financial year indicating whether it is recoverable and distinguishing between

- unauthorised expenditure of appropriated and approved funds, and unauthorised expenditure of donor funds;
- (ii) all material losses, and irregular and fruitless and wasteful expenditure that occurred during the financial year indicating whether these are recoverable;
 - (iii) any disciplinary or criminal steps instituted as a result of such losses or unauthorised, irregular or fruitless and wasteful expenditures; and
 - (iv) any material losses written off.

Submission of annual financial statements

56. Accounting Officer must, within two months after the end of the financial year, submit the annual financial statements to –

- (a) the Executive Authority;
- (b) the Auditor-General for auditing; and
- (c) 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 to the Executive Authority within two months of receiving 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 Executive Authority.

(3) The Executive Authority 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 Executive Authority within one month of receipt from the Auditor-General.

Tabling and consideration of annual report

59. (1) The Executive Authority must table the annual report in the Legislature.

(2) The annual report, including the audited financial statements and audit report, must be made public.

(3) The annual report of the Legislature must, after tabling, be referred to the Committee.

Issues raised in audit reports

60. (1) The Accounting Officer must –

- (a) promptly address any issues raised by the Auditor-General in an audit report; and
- (b) advise the Executive Authority 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 Executive Authority; and
- (b) the Executive Authority –
 - (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 Executive Authority 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 Executive Authority –
 - (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 Executive Authority immediately on discovery.

Other information

63. The Accounting Officer must comply with any request by the Legislature, the Committee, the Executive Authority, or the Auditor-General for information, documents, explanations and motivations.

CHAPTER 9

REGULATIONS AND INSTRUCTIONS

Regulations

64. (1) The Executive Authority may issue regulations not inconsistent with this Act concerning-

- (a) any matter in respect of which this Act authorises 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's 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, unauthorised 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.

(2) Regulations in terms of subsection (1) may prescribe that the prior approval of the Executive Authority must be obtained for particular actions.

(3) The Accounting Officer must-

- (a) ensure that drafts of regulations required by this Act are prepared;
- (b) periodically review regulations made in terms of the Act; and
- (c) when appropriate, ensure that draft amendments are prepared.

(4)(a) The Executive Authority may approve departures from regulations or condone a failure to comply with a 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 Executive Authority 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 Executive Authority in terms of subsection (1) may come into

effect only after they have been approved by the Legislature.

(7) The Accounting Officer must publish all regulations approved by the Legislature-

(a) in a 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 Executive Authority may, for the purpose of implementing this Act, issue written instructions not inconsistent with this Act or its regulations.

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

CHAPTER 10

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;
- (c) makes, permits or instructs another official of the Legislature to make an unauthorised, irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information in any document which must be submitted to the Executive Authority, the Provincial Treasury or the Auditor-General in terms of this Act.

(2) The Executive Authority must—

- (a) investigate promptly any 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;
 - (c) makes, permits or instructs another official of the Legislature to make, an unauthorised, irregular or fruitless and wasteful expenditure; or
 - (d) provides incorrect or misleading information in any document submitted to the Accounting Officer.
- (2) The Accounting Officer must –
- (a) investigate any 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 any 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 Executive Authority or Auditor-General on any bank accounts of the Legislature or on money received or spent by the Legislature; or
 - (e) intentionally provide false or misleading information in any document which in terms of a requirement of this Act must be submitted to the Executive Authority or Auditor-General.
- (2) It is an offence for any 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 any 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 11
MISCELLANEOUS

Liability of functionaries exercising powers and functions in terms of this Act

70. (1) Executive Authority, the Accounting Officer or any other official exercising a power or performing a function in terms of this Act, is not liable for any 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, any loss or damage suffered by it because of the intentional or negligent unlawful actions of that Accounting Officer or other official when performing a function in terms of this Act.

Short title and commencement

71. This Act is called the Financial Management of the Eastern Cape Provincial Legislature Act, 2009.

SCHEDULE 1. CODE OF ETHICS THE EXECUTIVE AUTHORITY

- (1) The object of this Code is to enhance the confidence of the public and Members in the integrity of the management of the Legislature. It applies the Executive Authority 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 Executive Authority must conform to the principles of good governance set out in this Schedule.
- (3) The Executive Authority must-
- (a) fulfil all the obligations placed upon it by the Constitution, the law and the 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 conflicts of interests from arising and, if such a conflict does arise, resolve the conflict in favour of the interests of the Legislature and the public.
- (4) The Executive Authority may not-
- (a) use her or his position to enrich herself or himself for improperly benefit any other person;
 - (b) expose herself or himself to any situation involving the risk of a conflict between official responsibilities and private interests;
 - (c) receive remuneration for any work or service other than for the performance of her or his functions as Executive Authority; or
 - (d) use any allowance provided by the Legislature for a purpose other than that for which it was provided.
- (5) Any complaints concerning adherence to this Code must be determined by the Ethics Committee under the Standing Rules of the Legislature to oversee the Code of Ethics for members of the Legislature.

SCHEDULE 2. MATTERS THAT MUST BE COVERED IN THE LEGISLATURE'S SUPPLY CHAIN MANAGEMENT POLICY

The Legislature's supply chain management policy must cover 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 conflicts of interests 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 conflicts of interest in accordance with the Policy;
- (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 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 policy of The Legislature may be amended by the parties.

SCHEDULE 3. 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 the Act comes into effect.
- (3) Until such time as any provision contemplated by items (1) and (2) of this Schedule comes into effect, the Legislature shall continue to comply with any applicable requirement on the Public Finance Management Act and its regulations.
- (4) Until such time as any regulation that must be made in terms of this Act comes into force, any 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 the 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 the Act came into effect, the holder of that office and any future holder of the office may continue to exercise the power or perform the duty.
- (7) Sections 39, 44 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 the Act coming into effect.

MEMORANDUM ON THE OBJECTS OF THE FINANCIAL MANAGEMENT OF THE EASTERN CAPE LEGISLATURE, 2009

1. INTRODUCTION

The Constitution requires transparency and accountability in all budget processes and effective financial management of the public sector. The Public Finance Management Act 1999 (Act No 1 of 1999) provides the framework within which this can be achieved in national and provincial departments, as well as constitutional institutions and public entities. The Municipal Finance Management Act 2003 (Act No 56 of 2003) does the same for local government.

Implementation and monitoring of the Public Finance Management Act is the responsibility of the National and Provincial Treasuries. It is this executive control which makes the regulatory framework established by the Act inappropriate for Parliament and the provincial legislatures.

The constitutional principle of separation of powers, one of the cornerstones of our constitutional democracy, requires that Parliament and the provincial legislatures remain responsible for the sound financial management of their respective institutions. Consistent with the separation of powers, the Public Finance Management Act applies only to a limited extent to Parliament and the provincial legislatures.

This Bill seeks to consolidate and regulate the financial management of Parliament in a single Act and to provide a framework for the financial management of provincial legislatures.

2. OBJECTS OF THE BILL

Firstly, this Bill seeks to regulate the financial management of the Eastern Cape Legislature in a manner that is consistent with the constitutional status of the Legislature and the constitutional requirements for tabling money Bills. It establishes a consultative relationship between the Legislature and the Provincial Treasury that is to be conducted at a high level.

Secondly, the Bill seeks to ensure that all revenue, expenditure and assets and liabilities of the Legislature are managed in a manner that is efficient, effective and transparent and that is consistent with national financial management frameworks and practices. The Bill seeks to do so by, among other things, stipulating the responsibilities of persons who are entrusted with the financial management in the Legislature and providing for oversight of the Legislature's budgeting and expenditure through a Budget and Oversight Committee of the Legislature.

3. CONTENT OF THE BILL

1. Clause 1 sets out the definitions of terms used in the Bill.
2. Clause 2 sets out the objects of the Bill.
3. Clause 3 provides that a Budget and Oversight Committee of the Legislature must maintain oversight of the financial management of the Legislature.
4. Clause 4 provides that the Speaker is the Executive Authority of the Legislature, that he/she appoints the Accounting Officer and that he/she is accountable to Legislature for the sound financial management of the Legislature.
5. Clause 5 provides that the Secretary of the Legislature is the Accounting Officer and is accountable to the Executive Authority for the financial management of the Legislature.
6. Clause 6 sets out the financial management functions of the Accounting Officer which include ensuring that the Legislature's resources are used effectively, efficiently, economically and transparently, maintaining full and proper financial records and ensuring effective systems for financial management, risk management, internal control and internal audit.
7. Clause 7 requires the Accounting Officer to have a written performance agreement concluded annually with the Executive Authority.

8. Clause 8 specifies that in the absence of the Accounting Officer, his or her functions are performed by another official designated by the Accounting Officer for 14 days or less and the Executive Authority for more than 14 days/.
9. Clause 9 requires the Accounting Officer to establish a system of delegation for the delegating of the Accounting Officer's powers and duties in terms of the Bill.
10. Clause 10 sets out the responsibilities of officials of the Legislature.
11. Clause 11 provides that the Accounting Officer and all other officials who have any responsibility under the Bill must act in the best interests of the Legislature, disclose any facts which might influence decisions or actions in terms of the Bill and seek to prevent prejudice to the Legislature's financial interests and its good reputation.
12. Clause 12 requires the Executive Authority to oversee the preparation of the Legislature's Strategic Plan, Annual Performance Plan and Budget and Adjustments Budget. The Executive Authority must table the Strategic Plan and Annual Performance Plan in the Legislature.
13. Clause 13 provides for the Accounting Officer to prepare and present to the Executive Authority a draft Strategic Plan for the Legislature covering a 5 year period. The draft Strategic Plan must be prepared within six months of an election of the Legislature.
14. Clause 14 provides for the Accounting Officer to prepare a draft Annual Performance Plan for the Legislature covering the following financial year and the two financial years thereafter. The Performance Plan must contain updated projections of revenue and expenditure and specify performance targets for achieving the objectives and outcomes detailed in the Strategic Plan.
15. Clause 15 provides that the Accounting Officer must prepare a draft budget for the Legislature and present it to the Executive Authority at least 10 months prior to the start of the financial year.

16. Clause 15 requires that the Executive Authority determine a process for submitting the Legislature's budget and adjustments budget to the Provincial Treasury and submit the same accordingly.

17. Clause 17 provides that for each financial year the Legislature must appropriate funds in the provincial budget and approve the use of any funds derived from the Legislature's own revenue sources. Any revision of the appropriation of funds in the Annual Provincial Budget must be made in terms of a Provincial Annual Adjustments Budget.

18. Clause 18 provides that, if the Legislature does not pass its annual budget before the start of the financial year, funds may be withdrawn from the Provincial Revenue Fund for the Legislature's requirement as a direct charge until the Budget is passed and that funds from the Legislature's own revenue sources may be used to meet the requirements of the Legislature.

19. Clause 19 regulates unauthorised expenditure incurred by the Legislature, other than the unauthorised expenditure of donor funds. Unauthorised expenditure incurred by the Legislature becomes a charge against the Provincial Revenue Fund only if the Legislature appropriates an additional amount for any overspending of the Legislature's approved budget or, in respect of any other expenditure, the Legislature authorises the expenditure as a direct charge against the Provincial Revenue Fund.

20. Clause 20 provides that any unauthorised expenditure of donor funds that the Legislature approves becomes a charge against the Legislature's own funds and that any unapproved expenditure must be recovered from the person responsible for that expenditure.

21. Clause 21 allows the Accounting Officer to use a saving in the total amount appropriated under a main division within the Legislature's approved budget for defraying expenditure under another main division of the approved budget.

22. Clause 22 provides that the Legislature is not required to return to the Provincial Revenue Fund funds appropriated for a particular year that are not spent in that year. In subsequent financial years, any expenditure of such funds must be approved on the basis that these funds are funds derived from the Legislature's revenue sources.

23. Clause 23 requires the Executive Authority to prescribe a policy to ensure the efficient and effective banking and cash management of the Legislature's funds and for the investment of monies not immediately required.

24. Clause 24 provides for the Accounting Officer, with the approval of the Executive Authority, to open and maintain bank accounts.

25. Clause 25 provides that the Accounting Officer administers all the Legislature's bank accounts and is accountable to the Executive Authority in this regard.

26. Clause 26 provides that only the Accounting Officer, or officials to whom that power has been delegated, may withdraw or authorise the withdrawal of money from any of the Legislature's bank accounts.

27. Clause 27 provides that the Legislature may not borrow money, issue guarantees or securities or enter into transactions that bind it to a future financial commitment.

28. Clause 28 requires the Executive Authority, after consultation with the MEC for Finance, to determine a process for requisitioning appropriate funds to ensure sound cash flow management.

29. Clause 29 provides that the Accounting Officer is responsible for managing the Legislature's assets and liabilities and must ensure that the Legislature has an accounting and information system for this purpose.

30. Clause 30 provides that the Accounting Officer is responsible for managing the Legislature's revenues and must ensure that an effective revenue collection system and adequate system of internal controls are in place.

31. Clause 31 provides that the Accounting Officer must take effective and appropriate steps to collect all monies due to the Legislature.

32. Clause 32 provides for the Accounting Officer to be responsible for managing the expenditure of the Legislature and for putting in place an effective system of expenditure control and an appropriate accounting and information system.

33. Clause 33 provides for the Executive Authority to make regulations concerning the allocation and use of any funds provided by the Legislature to political parties or to members of the Legislature. These regulations must, among other things, specify the purposes for which funds may be used, establish an accounting procedure and provide for the recovery of funds spent irregularly.

34. Clause 34 provides that the Accounting Officer may transfer funds from the Legislature to another entity only if that entity implements, or has undertaken to implement, effective financial management. Transfers to entities in other countries or international institutions are governed by the instrument regulating South Africa's relationship with that entity or institution.

35. Clause 35 requires the Accounting Officer to ensure that spending is in accordance with the approved budget and that revenue and expenditure are properly monitored.

36. Clause 36 requires that any directive by the Executive Authority having financial implications must be addressed to the Accounting Officer in writing. Where a directive may result in unauthorised expenditure, the Accounting Officer must inform the Executive Authority and may only implement it if the Executive Authority issues a further instruction.

37. Clause 37 provides for the Accounting Officer to report in writing to the Executive Authority on any impending shortfalls and overspending and to identify steps to prevent or rectify such shortfalls or expenditure.

38. Clause 38 provides that Chapter 6 regulates the procurement by the Legislature of goods and services as well as the disposal and letting of the Legislature's assets.

39. Clause 39 requires the Executive Authority to prescribe by regulation a Supply Chain Management Policy. The policy must prohibit fraud and corruption, deal appropriately with conflicts of interest and establish appropriate supply chain management processes and procedures.

40. Clause 40 requires the Accounting Officer to implement the Supply Chain Management Policy and ensure that contracts concluded by the Legislature are properly enforced and to monitor their performance.

41. Clause 41 requires the Executive Authority to prescribe by regulation a policy dealing with offers to supply goods or services that are unsolicited by the Legislature or are not made in accordance with the Supply Chain Management Policy.

42. Clause 42 requires the Accounting Officer to notify the Auditor-General and the Executive Authority in writing if a contract, other than the one recommended, is concluded in respect of any tender.

43. Clause 43 prohibits members of the Legislature from *(i)* being members of tender committees for the Legislature; *(ii)* attending any meetings of such a committee as an observer; or *(iii)* participating in any way in the evaluation of tenders or other bids for the Legislature.

44. Clause 44 prohibits any person from interfering or improperly influencing the Legislature's Supply Chain Management or impeding the Accounting Officer in fulfilling his or her responsibilities or amending or tampering any tender or other bid.

45. Clause 45 prohibits contracts for goods or services to the Legislature being awarded to Members of Parliament and provincial legislatures, Cabinet and provincial Executive Council members, municipal councillors, state employees or any company in which such a person has a controlling or other substantial interest.

46. Clause 46 provides that the Executive Authority must appoint an independent Audit and Advisory Committee with at least three members who have appropriate experience and knowledge. The majority of members of the committee must be persons who are not public representatives or employees of the Legislature or the state and have no personal or financial interest in any matter related to the Legislature.

47. Clause 47 provides that the Audit and Advisory Committee must establish an audit charter to guide its audit approach and, in consultation with the internal audit unit, that of the internal audit unit, setting out its operating procedures and its relationship with the internal audit unit and the Accounting Officer. The Audit and Advisory Committee is required to investigate the Legislature's financial and risk management systems and report to and advise the Accounting Officer on its investigations and communicate any concerns to the Executive Authority and the Auditor-General. The Audit and Advisory Committee must also advise the executive Authority on any matter referred to it by the Executive Authority.

48. Clause 48 requires the Audit and Advisory Committee to report any information implicating the Accounting Officer in fraud, corruption or gross negligence to the Executive Authority and the oversight mechanism.

49. Clause 50 requires the Accounting Officer to establish the Legislature's internal audit unit to conduct internal audits in accordance with the standards set by the Institute of Internal

Auditors. The audit unit must be independent of the activities that it audits and have access to the Legislature's financial records and other relevant information.

50. Clause 50 requires the Accounting Officer to submit monthly financial statements to the Executive Authority and the National Treasury.

51. Clause 51 requires the Accounting Officer to report quarterly to the Executive Authority on the Legislature's performance in implementing its Annual Performance Plan.

52. Clause 52 requires the Accounting Officer to submit a mid-year budget and performance assessment to the Executive Authority indicating the progress the Legislature has made in resolving problems identified in its reports and in implementing the Annual Performance Plan. The mid-year assessment must recommend whether an Adjustments Budget is necessary and revise projections for revenue and expenditure to the extent necessary.

53. Clause 53 requires the Executive Authority to table the monthly, quarterly and mid-year reports in the Legislature for referral to the Budget and oversight Committee.

54. Clause 54 requires the Accounting Officer to prepare an annual report for each financial year providing a record of the activities of the Legislature's administration, a report on the performance of the Legislature's administration. The report must promote accountability for decisions made by the Legislature's administration during the year.

55. Clause 55 requires the Accounting Officer to prepare annual financial statements in accordance with the standards of generally recognised accounting practice and in the format prescribed by the Executive Authority.

56. Clause 56 requires the Accounting Officer to submit the financial statements to the Executive Authority, Auditor-General for auditing and to the Provincial Treasury for inclusion in the consolidated financial statements.

57. Clause 57 requires the Auditor-General to audit the Legislature's financial statements and submit an audit report to the Executive Authority.

58. Clause 58 requires the Accounting Officer to submit the Legislature's annual report to the Executive Authority for tabling in the Legislature.

59. Clause 59 requires the Executive Authority to table the annual report, including the Legislature's audited financial statements and audit report, in the Legislature and to ensure that it is made public and submitted to the Budget and Oversight Committee.

60. Clause 60 requires the Accounting Officer to address any issues raised by the Auditor-General in the audit report and advise the Executive Authority of the steps taken in this regard.

61. Clause 61 requires the Accounting Officer to submit an explanation if the Accounting Officer is unable to submit the annual financial statements to the Auditor-General in accordance with section 56 and requires the Executive Authority to report this to the Legislature.

62. Clause 62 requires the Accounting Officer to report particulars of any unauthorised irregular, fruitless or wasteful expenditure, or the likelihood of any such expenditure, to the Executive Authority.

63. Clause 63 requires the Accounting Officer to comply with any requests by the Legislature, the Executive Authority, or the Auditor-General for information, documents, explanations and motivations.

64. Clause 64 authorises the Executive Authority to issue regulations concerning matters dealt with in the Bill or to facilitate the application of the Bill. The Accounting Officer is responsible for preparing drafts of regulations and ensuring their review and amendment if necessary. Regulations made under section 65 only come into effect after approval by the Legislature. Drafts of the regulations concerning the funding of political parties or members of

the Legislature and the supply chain management system must be published for public comment.

65. Clause 65 authorises the Executive Authority to issue written instructions not inconsistent with this Bill in order to implement the Bill.

66. Clause 66 creates criminal offences relating to financial misconduct by the Accounting Officer. The Executive Authority must investigate allegations of financial misconduct against the Accounting Officer and if necessary institute disciplinary proceedings.

67. Clause 67 creates criminal offences in relation to the financial management responsibilities of officials of the Legislature. The Accounting Officer must investigate allegations of financial misconduct and if necessary institute disciplinary proceedings.

68. Clause 68 creates criminal offences for breaches of certain provisions in the Bill.

69. Clause 69 specifies that a person convicted of an offence in terms of the Bill is liable for a fine or imprisonment for a period not exceeding five years.

70. Clause 70 provides that the Accounting Officer and other officials exercising a power or performing a function in terms of the Bill are not liable for loss or damage resulting from the good faith exercise of their powers or performance of their function. The Legislature may recover from the Accounting Officer or other officials loss for damage suffered because of their deliberate or negligent unlawful actions.

71. Clause 71 provides for the short title of the Bill and provides that it comes into effect on assent by the President in accordance with transitional arrangements set out in Schedule 4.

72. Schedule 1 provides a Code of Ethics for the Executive Authority in respect of the exercise of her/his responsibilities in respect of the financial management of the Legislature. It

supplements the Legislature's Code of Ethics taking into account the special functions that the Executive Authority carries out.

73. Schedule 2 provides for the matters that must be covered in Parliament's Supply Chain Management Policy.

74. Schedule 3 provides for transitional arrangements for the implementation of the Bill.

4. CONSULTATION

A draft Bill was published for public comment in Provincial Gazette No * on *. The closing date for comment was *. The Auditor-General and provincial treasury were consulted.

5. FINANCIAL IMPLICATIONS FOR THE STATE

Implementation of the Bill will require the Legislature to strengthen its financial management systems. The cost of doing so should not be substantial as in most instances it requires existing systems to be strengthened or better administrative processes to be put in place. Where new systems are required, the Legislature would have had to incur these costs in the interests of sound financial management. The cost of strengthening the Legislature's financial management systems must be seen in relation to the benefits such spending will leverage. This includes direct benefits such as greater efficiency, better cash and asset management and costs savings in procurement, as well as more indirect benefits such as greater transparency in the management of funds, clear processes of accountability, and systems to ensure integrity in the use of the Legislature's funds.

6. PROCEDURE

The legislature has the constitutional authority to pass this Bill.