

LIMPOPO PROVINCE
LIMPOPO PROVINSIE
XIFUNDZANKULU XA LIMPOPO
PROFENSE YA LIMPOPO
VUNDU LA LIMPOPO
IPHROVINSI YELIMPOPO

**Provincial Gazette • Provinsiale Koerant • Gazete ya Xifundzankulu
Kuranta ya Profense • Gazethe ya Vundu**

(Registered as a newspaper) • (As 'n nuusblad geregistreer)
(Yi rhijistariwile tanihi Nyuziphapha)
(E ngwadisitšwe bjalo ka Kuranta)
(Yo redzhistarwa sa Nyusiphapha)

POLOKWANE,

11 NOVEMBER 2009
11 NOVEMBER 2009
11 HUKURI 2009
11 NOFEMERE 2009
11 LARA 2009

Vol. 16
Extraordinary

**Ku katsa na Tigazete to
Hlawuleka hinkwato**

No. 1701
Buitengewoon
**Hu tshi katelwa na
Gazethe dza Nyingo**

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GENERAL NOTICE

NOTICE 384 OF 2009

LIMPOPO PROVINCE

**FINANCIAL MANAGEMENT OF
THE LIMPOPO PROVINCIAL
LEGISLATURE BILL**

As introduced by the Speaker

BILL

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

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PREAMBLE

RECOGNISING –

that the legislature is governed by the democratic values and principles enshrined in the Constitution

AND in order to –

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

BE IT THEREFORE ENACTED by the Limpopo Provincial Legislature, 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 PFMA;

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

“**approved budget**”, means the total amount of funds that the legislature has –

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

“**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 unauthorized 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 Limpopo Province;

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

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

“month” means a calendar month;

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

“oversight Committee” means a Committee established in accordance with the Standing Rules and responsible for the oversight of the legislature 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 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 PFMA;
- (d) a member of the accounting authority of any national or provincial public entity; or
- (e) an employee of Parliament or a provincial legislature;

“political parties” means political parties represented in the legislature;

“prescribe” means prescribe by regulations in accordance with section 64;

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

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

“unauthorized 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;

“vote” means that portion of the legislature’s budget which forms part of an appropriation Act and

which specified the total amount of funds to be appropriated from the Provincial Revenue Fund for the legislature.

Objects of this Act

2. 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 treasury norms and standards established in terms of the PFMA; and
 - (iv) the fiscal policy of the provincial government to the extent that it is applicable to the legislature;
- (c) to provide the Provincial Treasury with-
 - (i) an opportunity to make comments on proposed annual budgets and 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;
- (d) to provide for the 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: The Oversight Committee

The Oversight Committee

3. (1) The oversight Committee, hereinafter to be referred to as the Committee, must maintain oversight of the financial management of the legislature by amongst 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 tabled to the legislature in terms of section 59;
 - (d) performing any other functions specified in this Act or by the Standing Rules of the legislature, or consistent with the objects of this Act.
- (2) Representation on the Committee must be in accordance with the Standing Rules of the legislature, except that the Executive Authority, the Deputy Speaker of the legislature –
- (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 and any other official of the legislature to appear before it;
- (4) the Committee has the powers that the committees of the legislature have under section 115 of the Constitution.

Part 2: Executive Authority

Executive Authority

- 4. (1) The Executive Authority of the legislature is the Speaker of the legislature.
- (2) The Executive Authority is responsible for the treasury functions in respect of the legislature.
- (3) Treasury functions include-
 - (a) preparation of the legislature's budget;
 - (b) exercise control over the implementation of the legislature's budget;
 - (c) promoting and enforcing transparency and effective management in respect of revenue, expenditure, assets and liabilities of the legislature;
 - (d) ensure that the legislature's fiscal policies are in line with the national and provincial policies; and
 - (e) performing any other function assigned in terms of this Act.
- (4) The Executive Authority is accountable to the legislature for the effective and efficient financial management of the legislature.
- (5) The Executive Authority appoints the accounting officer.

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. The accounting officer must ensure that –
 - (a) legislature's resources are used effectively, efficiently, economically 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 and auditing that may be imposed by legislation;
 - (e) the legislature has appropriate systems to manage a performance of its officials;
 - (f) there are suitable training and awareness programmes related to financial management for officials of the legislature;
 - (g) unauthorized, 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 cognizance of the audit report on the annual financial statements of the legislature.

Acting accounting officer

8. If the post of accounting officer is vacant, or if the accounting officer is unable to perform the functions of the position, those functions must be performed by another official designated in writing by the Executive Authority.

Delegation of powers and duties by accounting officer

9. (1) The accounting officer may delegate any powers 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 authorize 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 delegation under subsection (1), subject to any rights that may have become vested as a consequence of the decision.

Responsibilities of officials

10. (1) Every official who exercises financial management responsibilities 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, economically and transparently;
 - (iii) any unauthorized 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 persons.

CHAPTER 3

PLANNING AND BUDGETTING

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) Within six months after an election of the legislature, or by another date determined by the legislature, the accounting officer must prepare and present to the Executive Authority a draft strategic plan for the legislature's administration.

(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 eight months prior to the start of the financial year, must 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 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 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.
- (3) Despite the provisions of section 14 (1) the annual performance plan for the financial year on which the general elections are held must be prepared within six months after the general elections.

Annual Budget

15 (1) At least ten months prior to the start of the financial year, the accounting officer must 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.
- (iv) unspent funds in terms of section 22 ;
- (c) specify the legislature's proposed expenditure requirements per main division within the budget, distinguishing between the sources of funds identified in paragraph (b);
- (d) specify the purpose of each main division within the budget and provide explanations and other information substantiating the amounts proposed in terms of paragraph (b) and (c);
- (e) specify the allocations to Members of the legislature and political parties, 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;
- (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- the draft strategic plan of the legislature, within ten working days of receiving it from the accounting officer;
- (a) the draft annual performance plan, draft budget , at least one month before draft budget must be submitted to the Provincial Treasury;
 - (b) the draft adjustments budget, at least one month before the adjustments budget must be submitted to the Provincial Treasury; and
 - (c) any draft revisions to the approved allocations of the legislature's own funds.
- (2) The Executive Authority must –
- after consultation with the MEC, determine a process for submitting the legislature's
 - (a) 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 finalized and the provincial budget is introduced;
 - (c) submit the budget and adjustments budget to the Provincial Treasury; and
 - (d) represent the legislature in all discussions with the MEC on any aspect of the legislature's budget or adjustments budget.

Annual appropriations and approvals

17. (1) For each financial year the provincial legislature must -
- (a) appropriate funds contemplated in section 15(2)(b)(i) in the annual provincial budget; and
 - (b) approve the use of the funds contemplated in section 15(2)(b)(iii).
- (2) Revision of an appropriation in terms of subsection (1) (a) must be made –
- (a) by a provincial adjustments budget referred to in section 31 of the PFMA; and
 - (b) in accordance with the procedure set out in section 16(2)
- (3) 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 by the legislature in terms of subsection (1) may not –
- (a) during the first four months of the financial year, exceed forty-five percent of the total amount in the previous approved budget;
 - (b) during each of the following months, exceed ten percent 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 unauthorized expenditure incurred by the legislature, other than the unauthorized 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
 - (b) appropriates an additional amount to cover the overspending; or
 - (c) the expenditure is unauthorized for another reason and the legislature authorizes the expenditure as a direct charge against the Provincial Revenue Fund.
 - (d) in aggregate, exceed the total amount appropriated and approved in the previous approved budget.
- (3) The legislature must advise the Provincial Treasury of any unauthorized expenditure that is authorized in terms of subsection (2).
- (4) If the legislature authorizes unauthorized expenditure in terms of subsection (2) but does not appropriate an additional amount to cover the amount for the unauthorized expenditure, the unauthorized expenditure becomes a direct charge against the legislature's own funds.
- (5) Any unauthorized expenditure that the legislature does not approve must be recovered from the person responsible for the unauthorized expenditure, subject to the legislature's internal processes determining gross negligence on the part of the responsible person

Unauthorised expenditure of donor funds

20. (1) Any unauthorized 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 unauthorized expenditure, subject to the legislature's internal processes determining gross negligence on the part of the responsible person.

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 percent of the amount appropriated and approved under that main division.
- (4) This section does not authorize 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 63 and 64 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 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 in subsequent 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.
- (4) The accounting officer must comply with the prescribed tender procedures.

Control of bank accounts

25. 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.

Withdrawal 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 authorize 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 authorized for the provincial 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; and
 - (e) cash management or investment purposes in accordance with the policy made in terms of section 23.

Restrictions on borrowing, guarantees and other transaction

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) The legislature is not bound by a loan, guarantee, security or other transaction entered into in breach of subsection (1).
- (3) Subsection (1) does not prevent the legislature from –
 - (a) issuing or being bound by guarantees for loans in terms of a housing or motor vehicle scheme 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 30 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 purpose 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 recognized accounting practices; 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) The accounting officer is responsible for managing the revenue of the legislature.
- (2) For the purpose of subsection (1), the accounting officer must ensure that -
- (a) the legislature has effective 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 or 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 payments; and
 - (b) if appropriate, instituting legal proceedings.
- (2) The accounting officer may settle or write off a debt only as prescribed.
- (3) Interest must be charged on any debt owed to the legislature only as prescribed.

Expenditure management

32. (1) The accounting officer is responsible for managing the expenditure of the legislature.
- (2) For the purpose of subsection (1), the accounting officer must ensure that -
- (a) the legislature maintains an effective system of expenditure control, which includes procedures for the approval and authorization 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 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) directly the amount is unclear or disputed; or
 - (ii) it is agreed otherwise; and
 - (f) all financial accounts of the provincial legislature are closed monthly and reconciled with its record.

Support for Members and political parties

33. (1) The Executive Authority must make regulations concerning the allocation and use of any funds provided for 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 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 used 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 form to the accounting officer;
 - (h) provide for the recovery of funds spent irregularly; and
 - (i) establish a dispute resolution procedure.
- (4) The regulations must authorize 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;
 - (iii) any other information reasonably necessary to confirm that the political party or Member is entitled to 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 represented 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 provincial 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 transfers to entities in other countries or to international institutions.
- (3) Any transfer contemplated by subsection (2) 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 and financial implications

36. (1) A 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 unauthorized 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 unauthorized 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 unauthorized expenditure, the accounting officer is responsible for such unauthorized 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.
 - (c) 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 -
 - (d) give a copy to the accounting officer; and
- (6) 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. (1) 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 with 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 interest;
 - (d) establishes appropriate supply chain management processes and procedures, including –
 - (i) demand management;
 - (ii) acquisition management;
 - (iii) logistics management;
 - (iv) disposal management;
 - (v) risk management; and
 - (vi) regular assessment of supply chain performance;
 - (e) complies with other applicable legislation.¹

Implementation of supply chain management policy

40. 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.

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).

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.
- (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. (1) 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 and services to the legislature may be awarded to -
- (a) a Member of the legislature or a Member of the Executive Council;
 - (b) a Municipal Councillor;
 - (c) a person in the employ of the State whose participation in bidding for the contract may result in a conflict of interest; or
 - (d) any entity in which a person mentioned in paragraphs (a) to (c) is a Director or has a controlling or other substantial interest.

CHAPTER 7**AUDIT COMMITTEE AND INTERNAL AUDIT UNIT****Establishment of audit committee**

46. (1) The legislature must have an audit committee appointed by the Executive Authority.
- (2) The 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 committee must be individuals who -

- (a) are not employed by the legislature or the state, are not Members of the 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 subsection (3), who is knowledgeable of the status of the position and have the requisite business, financial and leadership skills, as the chairperson of the committee.
- (5) The terms of appointment and remuneration of members of the audit committee contemplated by subsection (3) must be consistent with the requirements by the South African Institute of Chartered Accountants in consultation with the Auditor-General, and tariffs determined by the Provincial Treasury.
- (6) A member of the audit committee who has a personal or financial interest in any matter before the committee must disclose that interest and withdraw from the proceedings of the committee when that matter is considered.

Functions of audit committee

47. (1) The audit committee must-
- (a) in consultation with internal auditors, establish an audit charter to –
 - (i) guide its audit approach and, in consultation with the internal audit unit that of the internal audit unit;
 - (ii) set out its operating procedures; and
 - (iii) determine the rules that govern its relationship with the internal audit unit an accounting officer; carry out such investigations into the provincial legislature’s financial and risk management
 - (b) as it considers necessary or as requested by the accounting officer;
 - (c) in the annual report of the legislature, comment on-
 - (i) the effectiveness of internal control;
 - (ii) the quality of financial management and any reports compiled by the accounting officer in terms of this Act; and
 - (iii) the quality of annual financial statement
 - (d) report to and advise the accounting officer on matters relating to the financial and risk management of the legislature; and
 - (e) communicate any concerns it deems necessary to the Executive Authority and the Auditor-General.
- (2) In performing its functions, the audit committee –
- (a) has access to the financial records and other relevant information of legislature;
 - (b) must meet as often as required to perform its functions, but at least times a year; and
 - (c) must liaise with -
 - (i) the internal audit unit of the legislature;
 - (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 conduct internal audits in accordance with the standards set by the Institute of Internal Auditors, for the purpose of maintaining consistency with internal audit functions in other organs of state.
- (2) The unit must prepare for the approval of the audit committee -
- (a) operating procedures to guide its relationship with the administration of the legislature; and
 - (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 unit must report quarterly to the accounting officer and the audit committee on its performance against the annual audit plan.
- (4) The unit 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 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;
 - (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 statement 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. (1) The accounting officer must, within thirty days after the end of each quarter, report to Executive Authority in the legislature's performance in implementing the annual performance plan in that quarter.
- (2) The quarterly performance reports must include the financial reports of the legislature for

the 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 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 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.
- (3) The annual report must be based on the annual performance plan and must at least contain–
- (a) the annual financial statements of the legislature for the relevant financial year as submitted to the Auditor-General;
 - (b) 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 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 general recognized accounting practice and, in the absence of an applicable standard, 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 in kind;
- (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;
 - (iii) provide a summary of all investments of the legislature as at the end of the financial year; and
- (c) provide particulars of –
 - (i) all unauthorized expenditure that occurred during the financial year indicating whether it is recoverable and distinguish between unauthorized expenditure of appropriated and approved funds, and unauthorized 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 unauthorized, irregular or fruitless and wasteful expenditures;
 - (iv) any material losses written off.

Submission of annual financial statements

56. (1) The accounting officer must within two (2) months of the end of the financial year, submit the annual financial statements -

- (a) to the Auditor-General for auditing; and
- (b) to the 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 55; and
- (b) submit an audit report on those statements to the Executive Authority through the accounting officer, 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 so that the Executive Authority is able to table the report in the legislature within five months of the end of the financial year concerned.

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 be referred to the Committee.

Issues raised in audit reports

60. 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 provision

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 auditing; and
- (iii) may order that disciplinary steps be taken against the accounting officer or off 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 unauthorized 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 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 authorizes regulations or policy;
 - (b) the handling of, and control over, the assets of the legislature;
 - (c) the improvement and maintenance of the assets of the legislature;
 - (d) the alienation, letting or other disposal of the assets of the legislature;
 - (e) an appropriate supply chain management system for the legislature which complies with Chapter 6;
 - (f) the financial management of the provisions 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, unauthorized and irregular expenditure;
 - (k) the cancellation or variation of contracts that are to the detriment of the provincial 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 this 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
 - (c) submitted to the oversight Committee promptly.
- (5) The Executive Authority must ensure that a draft of any proposed regulations dealing with any matter contemplated in section 34 or Chapter 36 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 the Announcements, Tablings and Committee Reports document of the legislature ; and
 - (b) in the Provincial Gazette.

Instructions

65. (1) For the purpose of implementing this Act, the Executive Authority may 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 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 deliberately 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, or permits or instructs another official of the legislature to make, an unauthorized, 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, unless it is obviously unfounded; and
 - (c) if the investigation warrants such a step, institute disciplinary proceedings promptly and in
 - (d) accordance with any 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 deliberately 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, or permits or instructs another official of the legislature to make, an unauthorized, 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, unless it is obviously unfounded; and
- (b) if the investigation warrants such a step, institute disciplinary proceedings within 30 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) deliberately or in a grossly negligent way-
 - (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 unauthorized, irregular or fruitless and wasteful expenditure;
 - (b) contravenes section 11(3)(b) ;
 - (c) fails to take all reasonable steps to prevent corrupt practices –
 - (i) in the management of the provincial legislature’s assets or receipt of money; or
 - (ii) in the implementation of the provincial legislature’s supply chain management system;
 - (d) deliberately 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) deliberately provide false or misleading information in any document which in terms of a requirement of this Act must be submitted to the Executive Authority nor 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 intentional 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 42, 43 or 44.

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) The Executive Authority, the accounting officer or any other official exercising a power or performing a function in terms of this Act, is not liable in respect of 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 deliberate 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 Limpopo Provincial Legislature Act, 2009 and comes into operation on assent by the Premier and in accordance with the transitional arrangements set out in Schedule 3 to this Act.

SCHEDULE 1**Code of Ethics for the Executive Authority**

- (1) The object of this Code is to enhance the confidence of the public and the Members in the integrity of the management of the legislature. It applies to the Executive Authority of the legislature and supplements the legislature's Code of Conduct. It recognizes that in holding high public office the Executive Authority has an obligation to perform the Executive Authority's 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) fulfill all the obligations placed upon him/her by the Constitution, the law and the rules, regulations and policies of the legislature;
 - (b) perform his/her duties and exercise his/her 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/her office; and
 - (d) arrange his/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 his/her position to enrich himself/herself or improperly benefit any other person;
 - (b) expose himself/herself to any situation involving the risk of a conflict between his/her official responsibilities and his/her private interests;
 - (c) receive remuneration for any work or service other than for the performance of his/her functions as the Executive Authority; or
 - (d) use any allowance provided by the legislature for a purpose other than that for which it is provided.
- (5) Any complaints concerning adherence to this Code must be determined by the legislature's committee established under the Rules of the legislature to oversee the Code of Conduct for the legislature.

SCHEDULE 2

Matters that must be covered in the legislature's supply chain management policy

A 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 re-qualified persons may participate;
- (g) bid documentation, and the advertising of an invitations for contracts;
- (h) procedures and mechanisms for –
 - (i) the opening, registering and recoding 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 person from participating in tendering or other bidding processes, including persons –
 - (i) convicted of fraud, corruption or any other crime involving dishonesty in the previous five years;
 - (ii) who willfully breached a contract with an organ of state during the previous five years; or
 - (iii) whose tax matters are not cleared by the South African Revenue Service;
- (o) measures for –
 - (i) combating dishonesty, favouritism and unfair and irregular practices in supply chain management; and
 - (ii) promoting ethics of officials of the legislature and others involved in supply chain management;
- (p) the invalidation of recommendations or decisions that were made, taken or in any way influenced by –
 - (i) Members of the legislature in contravention of this Act or any applicable code of conduct 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 will continue to comply with any applicable requirement of the Public Finance Management Act and its regulations.
- (4) Until such time as any regulations 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
 - (b) officer before the Act came into effect may continue to do so; and
 - (c) 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 38 and 40 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.

EXPLANATORY MEMORANDUM ON THE OBJECTS OF THE FINANCIAL MANAGEMENT OF THE LIMPOPO LEGISLATURE BILL, 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) (hereinafter referred to as “the PFMA”) 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 same in respect of local government.

As implementation and monitoring of the PFMA is the responsibility of the National and Provincial Treasuries, the regulatory framework established under the PFMA, in line with the doctrine of separation of powers, becomes inappropriate for legislatures. The need therefore arises that legislatures should become responsible for their own financial management.

2. OBJECTS OF THE BILL

Firstly, this Bill seeks to regulate the financial management in the legislature in a manner that is consistent with its constitutional status and the constitutional requirements for tabling money Bills. It establishes a consultative relationship between the legislature and the Member of the Executive Council responsible for financial matters in the province in regulating the financial management in the legislature.

Secondly, the Bill seeks to ensure that all revenue, expenditure and assets and liabilities in the legislature are managed in a manner that is efficient, effective and transparent

and that is consistent with provincial 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 in the Legislature's budgeting and expenditure through an oversight mechanism.

3. CLAUSE BY CLAUSE ANALYSIS

- 3.1 **Clause 1** sets out the definitions.
- 3.2 **Clause 2** sets out the objectives of the Bill.
- 3.3 **Clause 3** provides for the oversight Committee in the legislature which must maintain oversight on the financial management in the legislature.
- 3.4 **Clause 4** provides for the Executive Authority in the legislature consisting of the Speaker who is accountable to the legislature for the sound financial management in the legislature.
- 3.5 **Clause 5** provides that the Secretary to the legislature is the accounting officer and is accountable to the Executive Authority for the financial management in the legislature.
- 3.6. **Clause 6** sets out the general financial management functions of the accounting officer.
- 3.7. **Clause 7** requires the accounting officer to have a written performance agreement concluded with the Executive Authority.
- 3.8 **Clause 8** provides for the appointment of the accounting officer.
- 3.9 **Clause 9** provides for the delegation of powers and duties by the accounting officer in accordance with the established system of delegation.
- 3.10 **Clause 10** sets out the responsibilities of officials of the legislature entrusted with financial management.

- 3.11. **Clause 11** sets out the fiduciary responsibilities of the accounting officer and officials having responsibility under the Bill.
- 3.12. **Clause 12** requires the Executive Authority to oversee the preparation the legislature's strategic and annual performance plans and budget and adjustments budget.
- 3.13. **Clause 13** requires the accounting officer to prepare and present to the Executive Authority a draft strategic plan for the legislature's administration.
- 3.14. **Clause 14** requires the accounting officer to prepare and present a draft annual performance plan for the legislature to the Executive Authority.
- 3.15. **Clause 15** provides that the accounting officer must prepare a draft budget for the legislature and the present it to the Executive Authority.
- 3.16. **Clause 16** provides for the submission of drafts of the strategic plan, annual performance plan and budget by the accounting officer to the Executive Authority for referral to the Committee.
- 3.17. **Clause 17** provides for the annual appropriations and approvals of funds for each financial year by the legislature.
- 3.18. **Clause 18** prescribes the manner in which legislature's expenditures should be dealt with before the legislature's budget is passed.
- 3.19. **Clause 19** regulates unauthorized expenditure incurred by the legislature, and provides circumstances under which such expenditure does not become a charge against the Provincial Revenue Fund.
- 3.20. **Clause 20** regulates the handling of unauthorized expenditure of donor funds.
- 3.21. **Clause 21** provides for the virement between main divisions within the approved budget.

- 3.22. **Clause 22** provides for the treatment of unspent funds and how money appropriated or approved for a particular financial year and not spent in that year should be dealt with.
- 3.2.3. **Clause 23** requires of the Executive Authority to prescribe a policy on cash management and investment of monies in the legislature and for the accounting officer to establish systems for the implementation thereof.
- 3.24. **Clause 24** provides for the opening and maintenance of the legislature's bank accounts.
- 3.25. **Clause 25** provides that the control and administration of the legislature's bank by the accounting officer and his accountability to the Executive Authority.
- 3.26. **Clause 26** provides for the withdrawal of monies from the bank account only by the accounting officer or officials to whom power has been delegated.
- 3.27. **Clause 27** provides for the restrictions on borrowing, issuing of guarantees or securities or entering into transactions that bind the legislature to a future financial commitment.
- 3.28. **Clause 28** provides for the determination of a process for the requisition of appropriated funds by the accounting officer.
- 3.29. **Clause 29** provides for the accounting officer's responsibility for management of assets and liabilities.
- 3.30. **Clause 30** provides for the accounting officer's responsibility for the management of revenue.
- 3.31. **Clause 31** provides for the accounting officer's responsibility for debt management.
- 3.32. **Clause 32** provides for the accounting officer's responsibility for the management of expenditures.
- 3.33. **Clause 33** provides for the support for Members and political parties in accordance with the regulations made by the Executive Authority in terms of allocation and use of any funds.

- 3.34. **Clause 34** provides for the process to be adhered to by the accounting officer before the transferring of funds from the legislature.
- 3.35. **Clause 35** provides for the implementation of the legislature's budget and for accounting officer to ensure that spending, revenue and expenditure are properly monitored.
- 3.36. **Clause 36** requires any directive by the Executive Authority having financial implications to the accounting officer to be in writing and a further written directive if it will result in unauthorized expenditure.
- 3.37. **Clause 37** deals with impending shortfalls and overspending and the reporting thereof by the accounting officer to the Executive Authority.
- 3.38. **Clause 38** provides for the application of Chapter 6: Supply Chain Management.
- 3.39. **Clause 39** requires the Executive Authority to prescribe a supply chain management policy in accordance with the regulations.
- 3.40. **Clause 40** provides for the implementation of supply chain management policy.
- 3.41. **Clause 41** requires the Executive Authority to prescribe a policy on unsolicited offers to supply goods or services not in accordance with the supply chain management policy.
- 3.42. **Clause 42** provides for the process to be followed by the accounting officer in cases of tenders not recommended.
- 3.43. **Clause 43** sets out prohibitions on Members of the legislature from serving on tender committees.
- 3.44. **Clause 44** provides for prohibitions in the interference in the supply chain management systems or with the Accounting Officer's responsibilities.
- 3.45. **Clause 45** prohibits the awarding of contracts for the provision of goods and services to

the legislature to specific persons.

- 3.46. **Clause 46** provides for the establishment of the audit committee.
- 3.47. **Clause 47** provides for the functions the audit committee.
- 3.48. **Clause 48** requires the audit committee to report any allegations against the accounting officer to the Executive Authority and the Committee.
- 3.49. **Clause 49** provides for the establishment of an internal audit unit, its functions and responsibilities.
- 3.50. **Clause 50** provides for the submission of monthly financial reports to the Executive Authority and the Provincial Treasury.
- 3.51. **Clause 51** provides for the quarterly performance reporting by the accounting officer.
- 3.52. **Clause 52** provides for the submission by the accounting officer of mid-year budget and performance assessment to the Executive Authority.
- 3.53. **Clause 53** for the tabling of quarterly and mid-year reports by the Executive Authority in the legislature for referral to the Committee.
- 3.54. **Clause 54** provides for the preparation of the annual report by the accounting officer for each financial year on the performance in the legislature's administration.
- 3.55. **Clause 55** provides for the preparation of the financial statements by the accounting officer.
- 3.56. **Clause 56** provides for the submission by the accounting officer of the financial statements to the Auditor-General and to the Provincial Treasury.
- 3.57. **Clause 57** provides for the auditing of the financial statement by the Auditor-General and for the submission of the audit report to the Executive Authority.

- 3.58. **Clause 58** provides for the submission of the annual report to the Executive Authority after receipt thereof from the Auditor-General.
- 3.59. **Clause 59** provides for the tabling and consideration of the annual report, including the audited financial statements and audit report in the legislature.
- 3.60. **Clause 60** requires the accounting officer to attend to issues raised in the audit report.
- 3.61. **Clause 61** provides for consequences of non-compliance with certain provisions by the accounting officer.
- 3.62. **Clause 62** provides for the reporting of irregularities by the accounting officer to the Executive Authority.
- 3.63. **Clause 63** provides for the accounting officer's compliance with any requests by the legislature, the Executive Authority, or the Auditor-General.
- 3.64. **Clause 64** provides for the issuing of regulations by the Executive Authority concerning matters dealt with in the Bill or to facilitate the application of the Bill.
- 3.65. **Clause 65** provides for the issuing of written instructions not inconsistent with this Bill.
- 3.66. **Clause 66** provides for financial misconduct by accounting officer.
- 3.67. **Clause 67** provides for the financial misconduct by officials of the legislature.
- 3.68. **Clause 68** provides for criminal offences for contravention with the provision of the Bill.
- 3.69. **Clause 69** provides for penalties on conviction for an offence committed in terms of the Bill.
- 3.70. **Clause 70** provides for the indemnity of functionaries exercising powers or performing a function in good faith in terms of the Bill.
- 3.71. **Clause 71** provides for the short title and commencement date.

4. Schedules

Schedule 1: Code of Ethics for the Executive Authority,

Schedule 2: Matters regulated under Supply Chain Management Policy,

Schedule 3: Transitional Arrangements.

5. FINANCIAL IMPLICATIONS

None except the costs of publication and gazetting
