

***THE PROVINCE OF
GAUTENG***

***DIE PROVINSIE
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CONTENTS • INHOUD

<i>No.</i>		<i>Page No.</i>	<i>Gazette No.</i>
GENERAL NOTICES			
1264	Financial Management of Gauteng Provincial Legislature Bill	3	169
1265	Gauteng Provincial Legislature Committee Inquiries Bill	38	169

GENERAL NOTICES

NOTICE 1264 OF 2009

FINANCIAL MANAGEMENT OF GAUTENG PROVINCIAL LEGISLATURE BILL

(Introduced by the Portfolio Committee on Finance)

BILL

To regulate the financial management of the Provincial Legislature that will promote accountable, transparent and sound financial management, and will 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 Provincial Legislature; and to provide for matters connected therewith.

ARRANGEMENT OF SECTIONS

PREAMBLE

CHAPTER 1

INTERPRETATION AND OBJECTS

1. Definitions
2. Objects of this Act

CHAPTER 2

OVERSIGHT, EXECUTIVE AUTHORITY AND ADMINISTRATION OF ACT

PART 1: Oversight mechanism

3. Oversight mechanism

PART 2: Executive Authority

4. Executive Authority

PART 3: Administration of Act

5. Accounting Officer
6. General financial management functions
7. Performance of Accounting Officer
8. Acting Accounting Officer
9. Delegation of powers and duties by Accounting Officer
10. Responsibilities of officials
11. Fiduciary responsibilities

CHAPTER 3

PLANNING AND BUDGETTING

12. Preparation of strategic plan, annual performance plan and budget
13. Strategic plan
14. Annual performance plan
15. Annual budget

16. Submission of drafts of strategic plan, annual performance plan and budget
17. Annual appropriations and approvals
18. Expenditure before the Provincial Legislature's annual budget is passed
19. Unauthorized expenditure
20. Unauthorized expenditure of donor funds
21. Virements between main divisions within the approved budget
22. Treatment of unspent funds

CHAPTER 4

CASH MANAGEMENT AND INVESTMENT

23. Cash management and investment policy
24. Opening of bank accounts
25. Control of bank accounts
26. Withdrawals from bank accounts
27. Restrictions on borrowing, guarantee and other transactions
28. Requisitioning of funds by Accounting Officer

CHAPTER 5

FINANCIAL MANAGEMENT

29. Asset and liability management
30. Revenue management
31. Management of debtors
32. Expenditure management
33. Transfers
34. Budget implementation
35. Financial implications
36. Impending shortfalls and overspending

CHAPTER 6

SUPPLY CHAIN MANAGEMENT

37. Application of this Chapter
38. Supply chain management policy
39. Implementation of supply chain management policy
40. Unsolicited offers
41. Tenders not recommended
42. Members of the Provincial Legislature barred from serving on tender committees
43. Interference
44. Prohibition on contracts

CHAPTER 7

AUDIT COMMITTEE AND INTERNAL AUDIT UNIT

45. Establishment of audit committee
46. Functions of audit committee
47. Allegations against Accounting Officer
48. Internal audit unit

CHAPTER 8

REPORTING AND AUDITING

PART 1: In-year reporting

49. Monthly financial statements
50. Quarterly performance reports
51. Mid-year budget and performance assessment
52. Submission of reports of an oversight mechanism

PART 2: Annual report, financial statements and auditing

53. Preparation of annual reports
54. Preparation of financial statements
55. Submission of annual financial statements
56. Auditing of annual financial statements
57. Submission of annual report
58. Tabling and consideration of annual report
59. Issues raised in audit reports
60. Consequences of non-compliance with certain provisions

PART 3: General reporting responsibilities

61. Reporting of irregularities
62. Other information

CHAPTER 9

REGULATIONS AND INSTRUCTIONS

63. Regulations
64. Instructions

CHAPTER 10

FINANCIAL MISCONDUCT

PART 1: Disciplinary proceedings

65. Financial misconduct by Accounting Officer
66. Financial misconduct by officials

PART 2: Criminal proceedings

67. Offences
68. Penalties

CHAPTER 11

MISCELLANEOUS

69. Liability for functionaries exercising powers and functions in terms of this Act
70. Short title and commencement

PREAMBLE

Recognising –

that the Provincial 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 Provincial Legislature;
- Promote the efficient, economic and effective use of resources allocated to the Provincial Legislature;
- Ensure the transparent, accountable and sound management of the revenue, expenditure, assets and liabilities of the Provincial Legislature;

Be it enacted by the Gauteng 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 the Accounting Officer;
 - “**annual provincial budget**” means the annual provincial budget referred to in section 27(2) of the Public Finance Management Act;
 - “**a 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 Parliament or a provincial legislature;
 - “**approved budget**”, means the total amount of funds that the provincial legislature has –
 - (a) Appropriated from the Provincial Revenue Fund for the provincial legislature in a vote on a provincial appropriation Act; and
 - (b) Approved by the provincial legislature’s own funds in terms of section 18(1)(b);
 - “**Executive Authority**” means the Speaker of the Provincial 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;
 - “**main division**” means one of the main segments into which the provincial legislature’s approved budget is divided and which specifies the total amount which is appropriated and approved for the items under that segment;
 - “**month**” means one of the 12 months of a calendar year;
 - “**official**” means an employee of the provincial legislature or any other person to whom any function is delegated in terms of this Act;

“oversight mechanism” means the oversight mechanism contemplated in section 3;

“overspending” –

- (a) In relation to the approved budget of the Provincial 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 Provincial Legislature, means causing expenditure under the main division within the approved budget of the Provincial Legislature, means causing expenditure under the main division to exceed the amount appropriated or approved for that main division;

“prescribe” means prescribe by regulations in accordance with section 65;

“Provincial Legislature” means the Gauteng Provincial Legislature;

“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 for Finance on the advice of the Accounting Standards Board;

“this Act” includes regulations issued in terms of section 65 of the Act;

“unauthorized expenditure” means –

- (a) Overspending of the Provincial Legislature’s approved budget or a main division within that budget;
- (b) Any expenditure from the Provincial 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 22; and
- (c) Any expenditure of donor funds for a purpose not specified in the agreement with the donor;

“vote” means that portion of the Provincial 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 Provincial Legislatures.

Objects of this Act

2. The objects of this Act are –

- (a) To ensure transparency, accountability and sound management of the revenue, expenditure, assets and liabilities of the Provincial Legislature;
- (b) To ensure a consultative relationship between the Provincial Legislature and the Member of the Executive Council for Finance, conducted at a high level and based on respect for –
 - (i) the constitutional status of the Provincial Legislature;
 - (ii) the constitutional requirements for the tabling of money bills;
 - (iii) budget processes and standards of generally recognized accounting practice; and
 - (iv) The fiscal policy of the provincial government;
- (c) to provide the Provincial Treasury with –
 - (i) An opportunity to make comments on proposed annual budgets and adjustments budgets of the Provincial Legislature;
 - (ii) Information on the proposed annual budget and adjustments budgets of the Provincial Legislature for inclusion in the national annual budget and adjustments budgets; and
- (d) to ensure the provision of regular information on expenditure by the Provincial Legislature to its internal oversight mechanism.

CHAPTER 2

OVERSIGHT, EXECUTIVE AUTHORITY AND ADMINISTRATION OF ACT

Part 1: Oversight mechanism

Oversight Mechanism

- 3.(1) An oversight mechanism of the Provincial Legislature must maintain oversight of the financial management of the Provincial Legislature by amongst other things -
 - (a) Considering instructions issued by the Executive Authority in terms of section 37(5);
 - (b) Considering the annual report and financial statements submitted to the Provincial Legislature in terms of section 65;
 - (c) Considering instruction issued by the Executive Authority in terms of section 64; and
 - (d) Performing any other functions specified in this Act or by the Standing Rules of the Provincial Legislature, nor consistent with the objects of this Act.
- (2) Representation on the oversight mechanism must be in accordance with the Standing Rules of the Provincial Legislature, except that the Executive Authority, the Deputy Speaker of the Provincial Legislature –
 - (a) may not be members of the oversight mechanism; and
 - (b) may only participate in the deliberations of the oversight mechanism at the request of the oversight mechanism.
- (3) The oversight mechanism may require the Accounting Officer and any other official of the Provincial Legislature to appear before it;
- (4) The oversight mechanism has the powers that the committees of the provincial legislature have under section 118 of the Constitution.

Part 2: Executive Authority

Executive Authority

- 4.(1) The Executive Authority of the Provincial Legislature is the Speaker of the Provincial Legislature.
- (2) The Executive Authority is accountable to the Provincial Legislature for the sound financial management of the Provincial Legislature.
- (3) The Executive Authority must act in accordance with the Provincial Legislature's Code of Ethics.

Part 3: Administration of Act

Accounting Officer

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

Responsibilities of the Accounting Officer

6. The Accounting Officer must ensure that –
 - (a) The Provincial Legislature's resources are used effectively, efficiently, economically and transparently;
 - (b) Full and proper records of the financial affairs of the Provincial Legislature are kept;
 - (c) The Provincial Legislature maintains effective, efficient and transparent systems of financial management, risk management, internal control and internal audit;
 - (d) The Provincial Legislature complies with any obligations in relation to taxes, levies, duties, pensions, medical and auditing that may be imposed by legislation;

- (e) Unauthorized, irregular and fruitless and wasteful expenditure and other losses are prevented, and appropriate steps are taken where such expenditure has occurred;
- (f) Disciplinary action is instituted against any employee of the Provincial Legislature who has allegedly committed an act of financial misconduct; and
- (g) When appropriate, criminal proceedings are initiated against any person who has allegedly committed an offence in terms of section 69.

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 Provincial 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 Provincial 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 post, 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 to him or her by this Act to an official of the Provincial 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 Provincial 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 provincial 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 Provincial 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 Provincial Legislature's system of financial management and internal control is implemented diligently;
 - (ii) the provincial 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 provincial legislature is collected; and
 - (v) the provincial 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 Provincial 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 Provincial 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 Provincial 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 Provincial Legislature.

Strategic plan

- 13.(1) Within six months after an election of the Provincial Legislature, or by another date determined by the Provincial Legislature, the Accounting Officer must prepare and present to the Executive Authority a draft strategic plan for the Provincial Legislature's administration.
- (2) The strategic plan for the Provincial Legislature's administration must -
- (a) cover the following five years or other period determined by the Provincial Legislature;
 - (b) specify the priorities of the Provincial Legislature's administration for the period of the plan;
 - (c) include objectives and outcomes for each programme of the Provincial 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) At least ten months prior to the start of the financial year, the Accounting Officer must prepare a draft annual performance plan for the Provincial 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 Provincial Legislature;
 - (b) indicate any changes to the Provincial 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 Provincial Legislature's performance in achieving the objectives and outcomes detailed in the strategic plan; and
 - (e) provide details of the Provincial 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 Provincial Legislature's performance in achieving the purposes of the projects.

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 Provincial Legislature and present it to the Executive Authority.
- (2) The Provincial Legislature's budget must –
- (a) cover the following financial year and the two financial years thereafter or other period determined by the Provincial Legislature;
 - (b) specify the Provincial 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 Provincial Legislature's own revenue sources, excluding donor funds.
 - (c) specify the provincial 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 Provincial 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 Provincial Legislature's donor funded projects; and
 - (h) be in accordance with the format prescribed under section 63, for the purpose of maintaining consistency with the format followed by other organs of state.

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

16. The Executive Authority must –
- (a) after consultation with the Member of the Executive Council for Finance, determine a process for submitting the Provincial Legislature's budget and adjustments budget to the Provincial Treasury;

- (b) consult with the Member of the Executive Council for Finance before the budget and adjustments budget are submitted to the Provincial Treasury;
- (c) submit the budget and adjustments budget to the Provincial Treasury; and
- (d) represent the Provincial Legislature in any discussions with the Member of the Executive Council for Finance on any aspect of the Provincial 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) 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 Provincial Legislature.

Expenditure before the Provincial Legislature's annual budget is passed

- 18.(1) If the Provincial 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 Provincial Legislature during that financial year as a direct charge against the Fund until the budget is passed; and
 - (b) funds from the Provincial Legislature's own revenue sources may be used to meet the requirements of the Provincial Legislature.
- (2) Funds made available by the Provincial 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 Provincial Legislature, other than the unauthorized expenditure of donor funds.
- (2) Unauthorised expenditure incurred by the Provincial Legislature does not become a charge against the Provincial Revenue Fund unless -
- (a) the expenditure is an overspending of the Provincial Legislature's approved budget and the Provincial Legislature appropriates an additional amount to cover the overspending; or
 - (b) the expenditure is unauthorized for another reason and the Provincial Legislature authorizes the expenditure as a direct charge against the Provincial Revenue Fund.
 - (c) in aggregate, exceed the total amount appropriated and approved in the previous approved budget.
- (3) The Provincial Legislature must advise the Provincial Treasury of any unauthorized expenditure that is authorized in terms of subsection (2).
- (4) If the Provincial 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 Provincial Legislature's own funds.

- (5) Any unauthorized expenditure that the Provincial Legislature does not approve must be recovered from the person responsible for the unauthorized expenditure, subject to the Provincial 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 Provincial Legislature approves becomes a charge against the Provincial Legislature's own funds.
- (2) Any unauthorised expenditure of donor funds that the Provincial Legislature does not approve must be recovered from the person responsible for the unauthorized expenditure, subject to the Provincial Legislature's internal processes determining gross negligence on the part of the responsible person.

Virements 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 Provincial 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 Provincial 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 Provincial 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 Provincial 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 Provincial 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 Provincial 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 63 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 Provincial Legislature must promptly be paid; and
 - (b) such other bank accounts as are necessary for the effective and efficient management of the Provincial Legislature's funds.
- (2) The Provincial 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 Provincial Legislature.
- (3) a bank account opened in terms of this section does not form part of the Provincial Revenue Fund.

Control of bank accounts

25. The Accounting Officer -
- (a) must administer all of the Provincial Legislature's bank accounts;
 - (b) is accountable to the Executive Authority for the Provincial 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 Provincial 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 Provincial Legislature only for -
- (a) defraying expenditure in accordance with the Provincial 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 transactions

- 27.(1) The Provincial 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 Provincial Legislature is bound by a loan, guarantee, security or other transaction entered into in breach of subsection (1).
- (3) Subsection (1) does not prevent the Provincial Legislature from -
- (a) issuing or being bound by guarantees for loans in terms of a housing or motor vehicle scheme administered by the Provincial 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 Member of the Executive Council for Finance, 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 Provincial Legislature's assets, including safeguarding and maintaining those assets; and
 - (b) the Provincial Legislature's liabilities.
- (2) For the purpose of subsection (1), the Accounting Officer must ensure that -
- (a) the Provincial Legislature maintains an accounting and information system that accounts for its assets and liabilities;
 - (b) the Provincial Legislature's assets and liabilities are valued in accordance with standards of generally recognized accounting practices; and
 - (c) the Provincial 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 Provincial Legislature.
- (2) For the purpose of subsection (1), the Accounting Officer must ensure that -
- (a) the Provincial Legislature has effective collection systems;
 - (b) all money received is deposited promptly into the bank account contemplated by section 24(1)(a)
 - (c) the Provincial Legislature maintains an accounting and information system which -
 - (i) recognizes revenue when it is earned or becomes due; and
 - (ii) accounts or receipts of revenue;
 - (d) the Provincial Legislature maintains a system of internal control in respect of revenue; and
 - (e) all revenue received by the Provincial 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 Provincial 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 in accordance with a policy prescribed in accordance with section 63.
- (3) Interest must be charged on any debt owed to the Provincial Legislature in accordance with a policy prescribed in accordance with section 63.

Expenditure management

- 32.(1) The Accounting Officer is responsible for managing the expenditure of the Provincial Legislature.
- (2) For the purpose of subsection (1), the Accounting Officer must ensure that -
- (a) the Provincial 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 Provincial Legislature maintains an accounting and information system which -
 - (i) recognizes expenditure when it is incurred;
 - (ii) accounts for creditors of the Provincial Legislature; and
 - (iii) accounts for payments by the Provincial Legislature;
 - (c) the Provincial Legislature maintains a system of internal control in respect of creditors and payments;
 - (d) the Provincial 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 Provincial 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 records.

Transfers

- 33.(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) (a) Subsection (1) does not apply to transfers to entities in other countries or to international institutions.
- (b) Any transfer contemplated by sub-paragraph (a) is governed by the instrument regulating the relationship between South Africa and that entity or institution.

Budget implementation

34. The Accounting Officer is responsible for implementing the Provincial Legislature's budget and must ensure that -
- (a) spending is in accordance with the approved budget; and
 - (b) revenue and expenditure are properly monitored.

Financial implications

- 35.(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 Provincial Legislature's budget and which cannot, without serious prejudice to the interests of the Provincial Legislature, be postponed to a future provincial appropriation or approval of funds; or
 - (b) an unforeseeable and unavoidable expenditure approved by the Provincial 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 Provincial Legislature for prompt referral to the oversight mechanism.
- (7) On receipt of a written instruction contemplated in subsection (6), the Accounting Officer must file a copy with the Auditor-General promptly.
- (8) If the Provincial Legislature does not authorize the expenditure arising from an instruction contemplated in subsection (6), the Executive Authority is responsible for the unauthorised expenditure and it must be recovered from the Executive Authority in his/her personal capacity.

Impending shortfalls and overspending

36. 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 Provincial 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

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

Supply chain management policy

38. The Executive Authority must prescribe in accordance with section 63 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; and
- (f) covers at least the matters specified in Schedule 1 of this Act.

Implementation of supply chain management policy

39. 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

40.(1) The Executive Authority may prescribe a policy in accordance with section 63 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 38.

(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

41.(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 Provincial Legislature barred from serving on tender committees

42. No Member of the Provincial Legislature may -

- (a) be a member of a committee evaluating or approving tenders, quotations, contracts or other bids for the Provincial 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 Provincial Legislature.

Interference

43. No person may -

- (a) interfere with, or improperly influence, the supply chain management system of the Provincial 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

44. No contract to provide goods and services to the Provincial Legislature may be awarded to -
- (a) a Member of the Provincial 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**

- 45.(1) The Provincial 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 Provincial Legislature or the state, are not Members of the Provincial Legislature or a municipal council; and
 - (b) have no personal or financial interest in any matter related to the Provincial Legislature.
- (4) The Executive Authority must appoint one of the members contemplated by 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

- 46.(1) The audit committee must-
- (a) 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 and the Accounting Officer;
 - (c) carry out such investigations into the Provincial Legislature's financial and risk management as it considers necessary or as requested by the Accounting Officer;
 - (d) report to and advise the Accounting Officer on matters relating to the financial and risk management of the Provincial 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 the Provincial 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 audit unit of the Provincial Legislature;
 - (ii) the person designated by the Auditor-General to audit the financial statements of the Provincial Legislature.

Allegations against Accounting Officer

47. 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 oversight mechanism.

Internal audit unit

- 48.(1) The Accounting Officer must establish the Provincial Legislature’s internal audit unit 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 Provincial 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 Provincial Legislature.

CHAPTER 8

REPORTING AND AUDITING

Part 1: In-year reporting

Monthly financial statements

- 59.(1) Within fifteen days after the end of each month, the Accounting Officer must submit a financial statement to the Executive Authority and the Provincial Treasury, in a format determined by the Executive Authority, reflecting the state of the Provincial 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 Provincial Legislature’s projected revenue by source, and from the Provincial Legislatures 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 Provincial Legislature’s approved budget.
- (2) The statement 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 Provincial Legislature’s budget.

Quarterly performance reports

50. Within 30 days of the end of each quarter, the Accounting Officer must report to the Executive Authority in the Provincial Legislature's performance in implementing the annual performance plan in that quarter.

Mid-year budget and performance assessment

- 51.(1) Before 31 October of each year, the Accounting Officer must submit to the Executive Authority a report that assesses the performance of the Provincial Legislature's administration during the first half of the financial year, taking into account –
- (a) the monthly statements referred to in section 49 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 oversight mechanism

- 52.(1) The Executive Authority must table the quarterly and mid-year reports in the Provincial Legislature within five working days of receiving the reports.
- (2) The Provincial Legislature must refer the reports to the oversight mechanism promptly.

Part 2:***Annual report, financial statements and auditing*****Preparation of annual reports**

- 53.(1) For each financial year, the Accounting Officer must prepare an annual report.
- (2) The purpose of an annual report is to –
- (a) provide a record of the activities of the Provincial Legislature's administration during the financial year to which the report relates;
 - (b) provide a report on performance of the Provincial Legislature's administration; and
 - (c) promote accountability for decisions made during the year by the Provincial 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 Provincial 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 Provincial Legislature during that financial year against the objectives and outcomes identified in the Provincial 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

- 54.(1) For each financial year, the Accounting Officer must prepare annual financial statements in accordance with the standards of generally 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 Provincial 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 Provincial Legislature as at the end of the financial year; and
 - (d) provide particulars of –
 - (i) all unauthorized expenditure that occurred during the financial year indicating whether it is recoverable and distinguishing 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 or unauthorized, irregular or fruitless and wasteful expenditures;
 - (iv) any material losses written off.

Submission of annual financial statements

55. Within two months after the end of the financial year, the Accounting Officer must 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

- 56.(1) The Auditor-General must -
- (a) audit the financial statements submitted in terms of section 54; 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. The Executive Authority must promptly table the report in the Provincial Legislature.
- (3) Once the Auditor-General has submitted an audit report to the Executive Authority, no person may alter the report or the annual financial statement to which the report relates.

Submission of annual report

57. The Accounting Officer must submit the Provincial Legislature's annual report to the Executive Authority so that the Executive Authority is able to table the report in the Provincial Legislature within five months of the end of the financial year concerned.

Tabling and consideration of annual report

- 58.(1) The Executive Authority must table the annual report in the Provincial Legislature within five working days of receiving it.

- (2) The annual report, including the audited financial statements and audit report must be made public.
- (3) The annual report of the Provincial Legislature must be referred to the oversight mechanism.

Issues raised in audit reports

59. 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

60.(1) If the Accounting Officer does not submit the annual financial statements to the Auditor-General in accordance with section 55 -

- (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 Provincial Legislature concerning 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 Provincial Legislature which must be made public.
- (2) If the Executive Authority does not table the annual report in the Provincial Legislature within five months of the end of the financial year concerned-
- (a) the Executive Authority -
 - (i) must table a report on the failure in the Provincial Legislature;
 - (ii) must take appropriate steps to ensure that the annual report is tabled in the Provincial Legislature; and
 - (b) the Auditor-General -
 - (i) must submit the audited financial statements and audit report to the Provincial Legislature for tabling; and
 - (ii) may issue a special report on the delay.

Part 3:

General reporting responsibilities

Reporting of irregularities

61. 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

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

CHAPTER 9

REGULATIONS AND INSTRUCTIONS

Regulations

- 63.(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 Provincial Legislature;
 - (c) the improvement and maintenance of the assets of the Provincial Legislature;
 - (d) the alienation, letting or other disposal of the assets of the Provincial Legislature;
 - (e) an appropriate supply chain management system for the Provincial 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 Provincial Legislature;
 - (g) the determination of any scales of fees, other charges or rates relating to services provided by the Provincial Legislature's administration
 - (h) the writing off of, or settling of claims in respect of, losses of money or other assets of the Provincial Legislature or amounts owed to the Provincial Legislature;
 - (i) liability for losses and damages, and procedures for recovery, including the recovery of fruitless and wasteful, unauthorized and irregular expenditure;
 - (j) the cancellation or variation of contracts that are to the detriment of the Provincial Legislature;
 - (k) the settlement of claims by or against the Provincial Legislature;
 - (l) the waiver of claims by the Provincial Legislature;
 - (m) the remission of money due to the Provincial Legislature;
 - (n) gifts or donations to officials of the Provincial Legislature;
 - (o) vouchers or other proofs of receipts or payments, which are defective or have been lost or damaged;
 - (p) 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
 - (q) any other matter concerning the financial management of the Provincial 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 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 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 Provincial Legislature.
- (7) The Accounting Officer must publish all regulations approved by the Provincial Legislature --
- (a) in a Provincial Legislature paper; and
 - (b) in the Government Gazette.

Instructions

- 64.(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 oversight mechanism promptly.

CHAPTER 10

FINANCIAL MISCONDUCT

Financial misconduct by Accounting Officer

- 65.(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 Provincial 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
 - (b) if the investigation warrants such a step, institute disciplinary proceedings promptly and in accordance with any applicable systems and procedures.

Financial misconduct by officials

- 66.(1) An official of the Provincial 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 Provincial 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.

Offences

- 67.(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 Provincial Legislature or on money received or spent by the Provincial 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 -
- (a) any official to whom a power or duty is delegated in terms of section 9, to contravene or fail to comply deliberately or in a grossly negligent way with the delegation or a condition of the delegation;
 - (b) any official who exercises financial management responsibilities in terms of section 10, to fail to fulfill those responsibilities deliberately or in a grossly negligent way; or
 - (c) any official to contravene section 11(3)(b).
- (3) It is an offence for any person to contravene sections 42, 43, 44 or 56(3).

Penalties

68. A person convicted of an offence in terms of section 67 is liable to a fine or to imprisonment for a period not exceeding five years.

CHAPTER 11

MISCELLANEOUS

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

- 69.(1) The Executive Authority, the Accounting Officer or any other official exercising a power or performing a function in terms of this Act, is 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 Provincial 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

70. This Act is called the Financial Management of the Gauteng 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 of the Provincial Legislature in the integrity of the management of the Provincial Legislature. It applies to the Executive Authority of the Provincial Legislature and supplements the Provincial 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 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 Provincial 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 Provincial 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 Provincial 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 Provincial Legislature's committee established under the Rules of the Provincial Legislature to oversee the Code of Conduct for the Provincial Legislature.

SCHEDULE 2

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

- A Provincial Legislature's supply chain management policy must cover the following matters –
- (a) the range of supply chain management processes that the Provincial Legislature may use, including tenders, quotations, auctions and other types of competitive bidding;
 - (b) when the Provincial 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 Provincial 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
 - (v) 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 Provincial 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 Provincial Legislature in contravention of this Act or any applicable code of conduct for Members of the Provincial Legislature;
 - (ii) officials of the Provincial Legislature in contravention of this Act or any applicable code of conduct for officials of the Provincial Legislature;
 - (q) the procurement of goods and services by the Provincial Legislature through contracts procured by other organs of state;
 - (r) contract management and dispute settling procedures;
 - (s) the delegation of the Provincial Legislature's supply chain management powers and duties to officials of the Provincial Legislature; and
 - (t) the circumstances in which a contract or agreement procured through the supply chain management policy of the Provincial 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 Provincial Legislature after the Act comes into effect.
- (2) Sections 14 to 19, 21, 22 and 49 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 Provincial 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 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 Provincial 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 38, 39 and 40 come into effect when the regulations that sections 38 and 40 anticipate are made in terms of section 63.
- (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 GAUTENG PROVINCIAL 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) 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 the Provincial Legislature.

The constitutional principle of separation of powers, one of the cornerstones of our constitutional democracy, requires that the Provincial Legislature remain responsible for the sound financial management of its institution. Consistent with the separation of powers, the Public Finance Management Act applies only to a limited extent to the Provincial Legislature. In addition to this, the Provincial Legislature's finances is regulated by certain provisions in the Powers and Privileges of the Gauteng Provincial Legislature Act, (Act No Of), which is kept in operation by section 31 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004 (Act No 4 of 2004).

This Bill seeks to consolidate and regulate and provide a framework for the financial management of the Provincial Legislature in a single Act.

2. OBJECTS OF THE BILL

Firstly, this Bill seeks to regulate the financial management of the Provincial Legislature in a manner that is consistent with the constitutional status of the Provincial Legislature and the constitutional requirements for tabling money Bills. It establishes a consultative relationship between the Provincial Legislature and the Member of the Executive Council for Finance 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 Provincial 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 Provincial Legislature and providing for oversight of the Provincial Legislature's budgeting and expenditure through an oversight mechanism.

3. CONTENTS OF THE BILL

1. Clause 1 sets out the definitions of terms used in the Bill.
2. Clause 2 sets out the objectives of the Bill.
3. Clause 3 provides that an oversight mechanism of the Provincial Legislature must maintain oversight of the financial management of the Provincial Legislature.
4. Clause 4 provides that the Executive Authority of the Provincial Legislature consisting of the Speaker of the Provincial Legislature is accountable to the Provincial Legislature for the sound financial management of the Provincial Legislature.
5. Clause 5 provides that the Secretary to the Provincial Legislature is the Accounting Officer and is accountable to the Executive Authority for the financial management of the Provincial Legislature.

6. Clause 6 sets out the financial management functions of the Accounting Officer which include ensuring that the Provincial 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 Executive Authority.
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 Provincial Legislature who exercise financial responsibilities.
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 Provincial Legislature, disclose any facts which might influence decisions or actions in terms of the Bill and seek to prevent prejudice to the provincial legislature's financial interests and its good reputation.
12. Clause 12 requires the Executive Authority to oversee the preparation of the Provincial 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 Provincial Legislature.
13. Clause 13 provides for the Accounting Officer to prepare and present to the Executive Authority a draft strategic plan for the Provincial Legislature's administration covering a 5 year period or other period determined by the Provincial Legislature. The draft strategic plan must be prepared within six months of an election of the Provincial Legislature.
14. Clause 14 provides for the Accounting Officer to prepare a draft annual performance plan for the Provincial 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 Provincial Legislature and present it to the Executive Authority at least 10 months prior to the start of the financial year.
16. Clause 16 requires that the Executive Authority determine a process for submitting a Provincial 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 Provincial Legislature must appropriate funds in the provincial budget and approve the use of any funds derived from the Provincial 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 Provincial Legislature does not pass its annual budget before the start of the financial year, funds may be withdrawn from the Provincial Revenue for the Provincial Legislature's requirement as a direct charge until the budget is passed and that funds from the Provincial Legislature's own revenue sources may be used to meet the requirements of the Provincial Legislature.

19. Clause 19 regulates unauthorized expenditure incurred by the Provincial Legislature, other than the unauthorized expenditure of donor funds. Unauthorised expenditure incurred by the Provincial Legislature becomes a charge against the Provincial Revenue Fund only if the Provincial Legislature appropriates an additional amount for any overspending of the Provincial Legislature's approved budget or, in respect of any other expenditure, the Provincial Legislature authorizes the expenditure as a direct charge against the Provincial Revenue Fund.
20. Clause 20 provides that any unauthorized expenditure of donor funds that the Provincial Legislature approves becomes a charge against the Provincial 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 Provincial Legislature's approved budget for defraying expenditure under another main division of the approved budget.
22. Clause 22 provides that the Provincial 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 bases that these funds are funds derived from the Provincial 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 Provincial 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 Provincial 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 authorize the withdrawal of money from of the Provincial Legislature's bank accounts.
27. Clause 27 provides that the Provincial 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 Member of the Executive Council 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 Provincial Legislature's assets and liabilities and must ensure that the Provincial Legislature has an accounting and information system for this purpose.
30. Clause 30 provides that the Accounting Officer is responsible for managing the Provincial 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 Provincial Legislature.
32. Clause 32 provides for the Accounting Officer to be responsible for managing the expenditure of the Provincial Legislature and for putting in place an effective system of expenditure control and an appropriate accounting and information system.

33. Clause 33 provides that the Accounting Officer may transfer funds from the Provincial 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.
34. Clause 34 requires the Accounting Officer to ensure that spending is in accordance with the approved budget and that revenue and expenditure are properly monitored.
35. Clause 35 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 unauthorized expenditure, the Accounting Officer must inform the Executive Authority and may only implement it if the Executive Authority issues a further instruction.
36. Clause 36 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.
37. Clause 37 provides that Chapter 6 regulates the procurement by the Provincial Legislature of goods and services as well as the disposal and letting of the Provincial Legislature's assets.
38. Clause 38 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.
39. Clause 39 requires the Accounting Officer to implement the supply chain management policy and ensure that contracts concluded by the Provincial Legislature are properly enforced and to monitor their performance.
40. Clause 40 requires the Executive Authority to prescribe by regulation a policy dealing with offers to supply goods or services that are unsolicited by the Provincial Legislature or are not made in accordance with the supply chain management policy.
41. Clause 41 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.
42. Clause 42 prohibits members of the Provincial Legislature from (i) being members of tender committees of the Provincial 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 Provincial Legislature.
43. Clause 43 prohibits any person from interfering or improperly influencing the Provincial 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.
44. Clause 44 provides contracts for goods and services to the Provincial Legislature being awarded to Members of the Provincial Legislature, Members of the Executive Council, municipal councilors, state employees or any company in which such a person has a controlling or other substantial interest.
45. Clause 45 provides that the Executive Authority must appoint an independent audit 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 Provincial Legislature or the state and have no personal or financial interest in any matter related to the Provincial Legislature.

46. Clause 46 provides that the audit 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 committee is required to investigate the Provincial 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.
47. Clause 47 requires the audit committee to report any information implicating the Accounting Office in fraud, corruption or gross negligence to the Executive Authority and the oversight mechanism.
48. Clause 48 requires the Accounting Officer to establish the Provincial 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 Provincial Legislature's financial records and other relevant information.
49. Clause 49 requires the Accounting Officer to submit monthly financial statements to the Executive Authority and the Provincial Treasury.
50. Clause 50 requires the Accounting Officer to report quarterly to the Executive Authority on the Provincial Legislature's performance in implementing its annual performance plan.
51. Clause 51 requires the Accounting Officer to submit a mid-year budget and performance assessment to the Executive Authority indicating the progress the Provincial 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.
52. Clause 52 requires the Executive Authority to table the quarterly and mid-year reports in the Provincial Legislature for referral to the oversight mechanism.
53. Clause 53 requires the Accounting Officer to prepare an annual report for each financial year providing a record of the activities of the Provincial Legislature's administration, a report on the performance of the Provincial Legislature's administration. The report must promote accountability for decisions made by the Provincial Legislature's administration during the year.
54. Clause 54 requires the Accounting Officer to prepare annual financial statements in accordance with the standards of generally recognized accounting practice and in the format prescribed by the Executive Authority.
55. Clause 55 requires the Accounting Officer to submit the financial statements to the Auditor-General for auditing and to the Provincial Treasury for inclusion in the consolidated financial statements.
56. Clause 56 requires the Auditor-General to audit the Provincial Legislature's financial statements and submit an audit report to the Executive Authority.
57. Clause 57 requires the Accounting Officer to submit the Provincial Legislature's annual report to the Executive Authority for tabling in the Provincial Legislature.
58. Clause 58 requires the Executive Authority to table the annual report, including the Provincial Legislature's audited financial statements and audit report, in the Provincial Legislature and to ensure that it is made public and submitted to the oversight mechanism.
59. Clause 59 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.

60. Clause 60 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 55 and requires the Executive Authority to report this to the provincial legislature.
 61. Clause 61 requires the Accounting Officer to report particulars of any unauthorized irregular, fruitless and wasteful expenditure, or the likelihood for any such expenditure, to the Executive Authority.
 62. Clause 62 requires the Accounting Officer to comply with any requests by the Provincial Legislature, the Executive Authority, or the Auditor-General for information, documents, explanations and motivations.
 63. Clause 63 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 62 only come into effect after approval by the Provincial Legislature. Drafts of the regulations concerning the funding of political parties or members of the Provincial Legislature and the supply chain management system must be published for public comment.
 64. Clause 64 authorises the Executive Authority to issue written instructions not inconsistent with this Bill in order to implement the Bill.
 65. Clause 65 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.
 66. Clause 66 creates criminal offences in relation to the financial management responsibilities of officials of the Provincial Legislature. The Accounting Officer must investigate allegations of financial misconduct and if necessary institute disciplinary proceedings.
 67. Clause 67 creates criminal offences for breaches of certain provisions in the Bill.
 68. Clause 68 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.
 69. Clause 69 provides that the Accounting Officer and other officials exercising a power of 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 Provincial Legislature may recover from the Accounting Officer or other officials loss for damage suffered because of their deliberate or negligent unlawful actions.
 70. Clause 70 provides for the short title of the Bill and provides that it comes into effect on assent by the Premier in accordance with transitional arrangements set out in Schedule 3.
- . Schedule 1 provides a Code of Ethics for the Executive Authority in respect of the exercise of his/her responsibilities in respect of the financial management of the Provincial Legislature. It supplements the Provincial Legislature's Code of Conduct taking into account the special functions that the Executive Authority carries out.
 - . Schedule 2 provides for the matters that must be covered in the Provincial Legislature's supply chain management policy.
 - . Schedule 3 provides for transitional arrangements for the implementation of the Bill.

4. CONSULTATION

A draft Bill was referred to the State Law Advisors who are based in the Premier's Office to get the comments of the Executive. In addition the following entities were consulted: the Provincial Treasury.

The Bill will further be published for public comments and identified stakeholders will be invited to make inputs on the Bill.

5. FINANCIAL IMPLICATIONS FOR THE PROVINCE

Implementation of the Bill will require the Provincial 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 Provincial Legislature would have had to incur these costs in the interests of sound financial management.

The cost of strengthening the Provincial 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 Provincial Legislature's funds.

6. PARLIAMENTARY PROCEDURE

The Provincial Legislature's Office Bearers are of the opinion that the Bill must be considered by a joint Committee of Finance and OCPOL in accordance with Rules of the Standing Rules.

NOTICE 1265 OF 2009

**GAUTENG PROVINCIAL LEGISLATURE
COMMITTEE INQUIRIES BILL**

(Introduced by the Standing Committee on Rules)

BILL

To regulate the summoning, attendance and examination of witnesses before an inquiry of the Provincial Legislature or any of its committees; and to provide for matters connected therewith.

ARRANGEMENT OF SECTIONS

PREAMBLE

CHAPTER 1

INTERPRETATION AND OBJECTS

1. Definitions
2. Objects of this Act

CHAPTER 2

INQUIRIES

3. Initiation and composition of an inquiry

CHAPTER 3

CONDUCTING AN INQUIRY

4. Summoning of witnesses

CHAPTER 4

PRIVILEGE

5. Privileges of witnesses

CHAPTER 5

OATH AND AFFIRMATION

6. Taking of oath/affirmation

CHAPTER 6

EVIDENCE

7. Questioning of witnesses

CHAPTER 7

MEETINGS

8.

CHAPTER 8

ACCESS TO INFORMATION

9.

CHAPTER 9

REPORTS OF THE COMMITTEE

10. Reporting requirements

CHAPTER 10

COMPENSATION FOR WITNESSES

11. Compensation for certain expenses

CHAPTER 11

LEGAL PROCEEDINGS

12. Legal proceedings against the legislature

CHAPTER 12

OFFENCES AND PENALTIES

13. Offences and Penalties

CHAPTER 12

MISCELLANEOUS

14. Short title and commencement

Schedule 1 - format for Summons

PREAMBLE

Whereas section 115 of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), provides for the summoning of any person to appear before it, to give evidence on oath or affirmation, or to produce documents; require any person or provincial institution to report to it; compel, in terms of Provincial Legislation or the rules and orders, any person or institution to comply with a summons or requirement as contemplated in section 115(a) or (b); and

to ensure the Provincial Legislature's constitutional mandate on oversight is further entrenched

Be it enacted by the Gauteng Provincial Legislature, as follows –

CHAPTER 1

INTERPRETATION AND OBJECTS

Definitions

1. In this Act, unless the context indicates otherwise –
 - “**ATC**” means Announcements, Tablings and Committee Reports;
 - “**Chairperson**” means the Chairperson of a committee;
 - “**Committee of inquiry**” means a committee of the Provincial Legislature established in terms of the rules, that has initiated an inquiry
 - “**Constitution**” means the Constitution of the Republic of South Africa, Act 108 of 1996;
 - “**Hansard**” means the recording, translation and transcription of proceedings;
 - “**House**” means a plenary of the Legislature;
 - “**Legislature**” means the Gauteng Provincial Legislature;
 - “**Members**” means members of the Provincial Legislature represented in a committee of the House including alternate members
 - “**Province**” means the province of Gauteng;
 - “**Presiding Officer**” means a member presiding over an inquiry meeting;
 - “**Secretary**” means the Secretary to the Provincial Legislature;
 - “**Standing Rules**” means the Gauteng Provincial Legislature Standing Rules;
 - “**to record**” means to take down in writing or to record by Hansard;
 - “**Witness**” means a person summoned to give evidence in an inquiry.

Objects of this Act

2. The objects of this Act are –
 - (a) To facilitate oversight of the Provincial Legislature over provincial departments and other provincial organs of state;
 - (b) To establish procedures for committee inquiries;
 - (c) To ensure the privilege of witnesses, officials and other persons from legal proceedings;
 - (d) To ensure the protection of information; and
 - (e) To empower committees to conduct inquiries on any area of competence of a provincial department or provincial organ of state.

CHAPTER 2

INQUIRIES

Initiation and composition of an inquiry

- 3.(1) A committee inquiry must be initiated by a committee.
- (2) A Chairperson of a committee shall preside over an inquiry.
- (3) Members of a committee that initiates an inquiry are automatically members of the inquiry.

CHAPTER 3

CONDUCTING AN INQUIRY

Summoning of witnesses

- 4.(1) A committee may summons any person or institution to appear before it to give evidence on oath or affirmation or to produce documents.
- (2) A summons to appear before a committee inquiry to give evidence or to produce documents must be issued by the Secretary on the instruction of the Speaker or the Chairperson of the relevant committee.
- (3) The summons must be served by the Sheriff, by delivering a copy of the summons:
 - (a) to the person mentioned in the summons; or
 - (b) to the person's place of residence, employment or business; or
 - (c) to a person over the age of 18 years residing or working with the person mentioned in the summons
- (4) Such summons must include –
 - (a) the time and place of the inquiry meeting;
 - (b) an instruction to produce all articles or documents in the possession, custody or under the control of any such person and which may be necessary in connection with the inquiry;
 - (c) the reasons why such person's presence is needed; and
 - (d) why such article or document should be produced.

CHAPTER 4

PRIVILEGES

Privileges of witnesses

- 5.(1) Witnesses are not liable to civil or criminal proceedings, arrest, imprisonment or damages for –
 - (a) anything that they have said in, produced before or submitted to the Legislature or any of its committees; or
 - (b) anything revealed as a result of anything that they have said in, produced before or submitted to the legislature or any of its committees.
- (2) Any incriminating answer or information obtained or incriminating evidence directly or indirectly derived from a questioning shall not be admissible as evidence against the person concerned in criminal proceedings in a court of law or before anybody or institution established by or under any law: Provided that incriminating evidence arising from such questioning shall be admissible in criminal proceedings where the person stands trial on a charge of perjury or a charge contemplated in section 12(b) of this Act.

CHAPTER 5

OATH AND AFFIRMATION

Taking of Oath/Affirmation

6. (1) Witnesses summoned to give evidence in an inquiry must testify under oath or affirmation
- (2) Witnesses must make the following oath or affirmation –

Oath

"I swear that the evidence that I shall give, shall be the truth, the whole truth and nothing but the truth."

Affirmation

"I solemnly affirm that the evidence that I shall give shall be the truth, the whole truth and nothing but the truth."

- (3) The Chairperson or Acting Chairperson of the committee, or in the absence of both the Chairperson and the Acting Chairperson, any member specially designated by the Chairperson or Acting Chairperson for that purpose must administer the oath or affirmation.

CHAPTER 6

EVIDENCE

Questioning of witnesses

- 7.(1) Any person questioned shall –
 - (a) be competent and compelled to answer all questions put to him or her regarding any fact or matter connected with the investigation of the inquiry notwithstanding that the answer may incriminate him or her;
 - (b) be compelled to produce to the inquiry any article or document in his or her possession or custody or under his or her control which may be necessary, in connection with the investigation.
- (2) Witnesses may not provide hearsay evidence to the committee, that is, witnesses may testify only to matters that are within their direct and personal knowledge, except for hearsay evidence that is admissible in terms of the Law of Evidence.

CHAPTER 7

MEETINGS

8. (1) At least one third of all members of the inquiry must be present to constitute an inquiry meeting.
- (2) Inquiry meetings must be open to the public including the media.

- (3) Members of a committee of inquiry may pose questions to witnesses through the Presiding Officer.
- (4) The Committee may direct that any person or category of persons or all persons, the presence of whom is not desirable, shall not be present at the proceedings during the inquiry or any part thereof.
- (5) An inspection *in loco* contemplated in section 9(3) is regarded as part of an inquiry meeting for purposes of this Act.
- (6) A majority of the members of the committee inquiry must be present when a vote is taken.
- (7) In the event of there being an equal number of votes on each side of the question, the Presiding Officer must cast a deciding vote.

CHAPTER 8

ACCESS TO INFORMATION

- 9.(1) The committee must gain access to all relevant documentation.
- (2) A document not disclosed to the committee prior to the proceedings may not be used without the permission of the Chairperson of the committee.
 - (3) If certain information (movable or immovable) is relevant to the inquiry and will require the physical inspection by the committee, the committee may undertake an inspection *in loco* in order to verify the facts.
 - (4) Any report issued by the committee of inquiry shall be open to the public, unless the committee is of the opinion that exceptional circumstances require that the report be kept confidential.
 - (5) If the Chairperson of the committee of inquiry is of the opinion that exceptional circumstances require that a report be kept confidential, the committee must be furnished with the reasons therefor and, if the committee concurs, such report shall be dealt with as a confidential document.
 - (6) For the purposes of this section, "exceptional circumstances" shall exist if the publication of the report concerned is likely –
 - (a) to endanger the security of the citizens of the Republic;
 - (b) to prejudice any other inquiry or pending inquiry;
 - (c) disturb the public order or undermine the public peace or security of the Republic;
 - (d) to be prejudicial to the interests of the Republic; or
 - (e) in the opinion of the Chairperson of the committee to have a bearing on the effective functioning of his/her office

CHAPTER 9

REPORTS OF THE COMMITTEE

Reporting Requirements

- 10.(1) Subsequent to an inquiry a committee of inquiry must formulate a report for the records of the legislature, subject to sections 9(4) and 10(3).
- (2) The report must include –
 - (a) the subject of the inquiry;
 - (b) the process of the inquiry;
 - (c) public participation and involvement of stakeholders;
 - (d) findings and recommendations of the committee; and
 - (e) in the instance of a differing view by a party represented in the committee of inquiry, a minority report identifying clearly, issues on which there is disagreement.
- (3) At the discretion of the Speaker, a report contemplated in 10(1) may be tabled for consideration and adoption by the House.

CHAPTER 10

COMPENSATION FOR WITNESSES

Compensation for certain expenses

- 11.(1) The committee may in consultation with the Speaker, in the exercise of its powers or the performance of its duties and functions by or under this Act, enter into contracts for the services of persons having technical or specialized knowledge of any matter relating to the subject of the inquiry.
- (2) The Secretary may, order that the expenses incurred by any person in the course of, or in connection with an inquiry by the committee, be paid from legislature funds.
- (3) Any person appearing before the committee, who is not in the public service, shall be entitled to receive from moneys appropriated by law for such purposes, as witness fees, an amount equal to the amount which he/she would have received as witness fees had he/she been summoned to attend criminal proceedings in the Supreme Court held at the place mentioned in the summons in question.

CHAPTER 11

LEGAL PROCEEDINGS

Legal proceedings against the legislature

- 12.(1) The Legislature is a state organ contemplated in terms of section 104 of the Constitution.
- (2) The State Liability Act, 1957 (Act 20 of 1957), shall apply *mutatis mutandis* in respect of the committee and in such application a reference in that Act to “the Minister of the department concerned” shall be construed as a reference to the Speaker of the legislature.
- (3) No –
- (a) member of the committee;
 - (b) member of the staff of the legislature;
 - (c) person contemplated in section 10(1); or
 - (d) member of any committee, who is not a member of the committee;

shall be liable in respect of anything reflected in any report, finding, point of view or recommendation made or expressed in good faith and submitted to the committee or made known in terms of this Act or the Constitution.

CHAPTER 12

OFFENCES AND PENALTIES

13. A person who -
- (a) without just cause refuses or fails to comply with a summons under section 4 or refuses to take the oath or to make an affirmation at the request of the Chairperson, Acting Chairperson, or a person specially designated by the Chairperson or the Acting Chairperson in terms of section 6 or refuses or fails to furnish particulars or information required from him or her under that section;
 - (b) after having been sworn or having made an affirmation contemplated in section 6(1) and (2), gives false evidence before the committee on any matter, knowing such evidence to be false or not knowing or believing it to be true;
 - (c) willfully interrupts the proceedings at an inquiry or misbehaves himself or herself in any manner in the place where such inquiry is being held;
 - (d) defames the committee or a member of the committee in his/her official capacity;

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

CHAPTER 13

MISCELLANEOUS

Short title and commencement

14. This Act is called the Gauteng Provincial Legislature Committee Inquiries Act, 2009 and comes into operation on assent by the Premier.

SCHEDULE 1

FORMAT FOR SUMMONS



COMMITTEE INQUIRY ON:

You are hereby required to appear before the Committee of in the Gauteng Provincial Legislature at On theday of 200..

To give evidence and produce documents if any, relating to the abovementioned inquiry

Dated aton this.....day of200.....

List of documents to be produced

Type of Document		
1.		
2.		
3.		
4.		
5.		

Signed at on this.....day of200...

.....
Chairperson of the Committee

**EXPLANATORY MEMORANDUM ON THE OBJECTS OF THE GAUTENG PROVINCIAL
LEGISLATURE COMMITTEE INQUIRIES BILL, 2009**

1. INTRODUCTION

Section 115 of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), provides for the summoning of any person to appear before it, to give evidence on oath or affirmation, or to produce documents; require any person or provincial institution to report to it; compel, in terms of Provincial Legislation or the rules and orders, any person or institution to comply with a summons or requirement as contemplated in section 115(a) or (b).

This Bill seeks to entrench the Legislature's constitutional mandate as outlined in section 115 of the Constitution and thus enhance oversight.

2. OBJECTS OF THE BILL

3. The objects of this Act are –

- (f) To facilitate oversight of the provincial legislature over provincial departments and other provincial organs of state;
- (g) To establish procedures for committee inquiries;
- (h) To ensure the privilege of witnesses, officials and other persons from legal proceedings;
- (i) To ensure the protection of information; and
- (j) To empower committees to conduct inquiries on any area of competence of a provincial department or provincial organ of state.

3. CONTENTS OF THE BILL

1. Clause 1 sets out the definitions of terms used in the Bill.
2. Clause 2 sets out the objectives of the Bill.
3. Clause 3 sets out who can initiate of an inquiry, the composition as well as who will preside over an inquiry.
4. Clause 4 sets out the summoning of witnesses and the contents of such summons.
5. Clause 5 sets out the privileges of witnesses with regard to evidence submitted to an inquiry.
6. Clause 6 provides for the taking of the oath or affirmation.
7. Clause 7 sets out the questioning of witnesses, and the submission of evidence.
8. Clause 8 sets out the quorum requirement to constitute a meeting of inquiry as well as for the taking of vote and the discretion of the committee to decide who to exclude from part or all of the proceedings.
9. Clause 9 provides for the accessing of relevant documentation by the committee and permissibility of documentation.
10. Clause 10 sets out the formulation and content of reports.
11. Clause 11 provides for the compensation of witnesses and the person responsible for ensuring the provision of such expenses.

12. Clause 12 sets out the parameters for legal proceedings against a committee, a member of the committee and staff of the committee.

13. Clause 13 sets out the offences and penalties.

14. Clause 14 provides for the short title of the Bill and provides that it comes into effect on assent by the Premier.

4. CONSULTATION

Consultation will be with the Executive, and Members of the Provincial Legislature and the Secretariat of the Provincial Legislature.

5. FINANCIAL IMPLICATIONS FOR THE PROVINCE

Implementation of the Bill will require the Provincial Legislature to appropriate funds for the executing of the Act.
