

**NORTH WEST
NOORDWES
EXTRAORDINARY
PROVINCIAL GAZETTE
BUITENGEWONE
PROVINSIALE KOERANT**

Vol. 253

29 APRIL 2010

No. 6770

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PREMIER'S NOTICE

No. 2

29 April 2010

NORTH WEST PROVINCIAL LEGISLATURE MANAGEMENT ACT 3 OF 2007

Notice is hereby given in terms of section 123 of the *Constitution* of the publication of the **North West Provincial Legislature Management Act no. 3 of 2007** as assented to by the Premier of the North West Province on **30th May 2008**.



Ms m. Gaoretelelwe
Acting Secretary: NWPL

NORTH WEST PROVINCIAL LEGISLATURE MANAGEMENT ACT, 3 of 2007

PREAMBLE

Recognizing—

that the North West 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 general and financial management of the North West Provincial Legislature
- promote the efficient, economic and effective use of resources allocated to the North West Provincial Legislature;
- ensure transparency, accountability and sound management of the revenue, expenditure, assets and liabilities of the North West Provincial Legislature;
- ensure effective management of the Legislature in order to enable it to fulfill its Constitutional mandate;

BE IT ENACTED by the North West Provincial Legislature as follows:

ACT

To provide for the repeal of the North West Provincial Legislature Service Act 8 of 1997; to provide for the establishment of a Service of the Legislature; to clearly define the roles, functions, and responsibilities of the Speaker of the Legislature, Members of the Legislature, and the Secretary to the Legislature; to establish a framework for the administration of the Legislature; to regulate the financial management of the Legislature in a manner consistent with its status in terms of the Constitution; to ensure that all revenue, expenditure, assets and liabilities of the Legislature are managed efficiently and effectively; to define the responsibilities of officials in the Legislature, and in particular, persons entrusted with financial management responsibilities in the Legislature; and to provide for matters connected therewith.

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**CHAPTER 1
INTERPRETATION AND OBJECTS**

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

"**Accounting Officer**" means the Secretary to the Legislature, and includes, where appropriate, a person acting as the Accounting Officer;

"**Accounting Standards Board**" means the board established in terms of section 87 of the Public Finance Management Act;

"**annual report**" means the annual report referred to in section 60;

"**approved budget**" means the Legislature's vote on the provincial annual budget as approved by the Legislature or revised in an adjustments budget by the Legislature;

"**Constitution**" means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"**employee**" means an employee as defined in terms of section 213 of the Labour Relations Act (Act No. 66 of 1995);

"**Executing Authority**" means the Speaker of the Legislature;

"**financial year**" means a year ending 31 March;

"**fixed establishment**" means the posts which have been created on the Legislature's organogram for the normal and regular requirements of the Legislature Service;

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

"**irregular expenditure**" means expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of this Act or any other applicable legislation that regulates the financial management of Provincial Legislatures;

"**Legislature**" means the North West Provincial Legislature, constituted in terms of section 105 of the Constitution;

"**main division**" means one of the main segments into which the Legislature's vote is divided and which specifies the total amount which is appropriated for the items under that segment;

"**Member**" means any elected Member of the North West Provincial Legislature;

"**month**" means one of the 12 months of a calendar year;

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

"**overspending**" —

(a) in relation to the vote of the Legislature, means causing expenditure under the vote to exceed the amount appropriated for the vote; or

(b) in relation to a main division within the vote of the Legislature, means causing expenditure under the main division to exceed the amount appropriated for that main division;

"**prescribe**" means prescribe by regulation in accordance with section 70;

"**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;

"**Secretary**" means the Secretary to the North West Provincial Legislature;

"**Service**" means the service of the Legislature established in terms of section 5;

"**Speaker**" means the Speaker of the North West Provincial Legislature, elected in terms of section 111 and Schedule 3 of the Constitution and the Standing Rules of the Legislature; and "Deputy Speaker" shall have a corresponding meaning; and

"**Standing Rules**" means the rules made by the Legislature in terms of section 116 of the Constitution;

"**standards of generally recognised accounting practice**" means an accounting practice complying in material respects with standards issued by the National Minister of Finance on the advice of the Accounting Standards Board;

"unauthorised expenditure" means—

- (a) overspending of the Legislature's vote or a main division within that vote;
- (b) any expenditure from the Legislature's vote or a main division within the vote for a purpose unrelated to the vote or main division, subject to section 24;
- (c) any expenditure of money for a purpose for which funds have not been appropriated or approved; or
- (d) any expenditure of donor funds for a purpose other than that specified in the agreement with the donor;

"vote" means the Legislature's vote on the provincial annual budget referred to in section 28 (1) of the Public Finance Management Act;

(2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended.

Object of this Act

- 2. (1) The objects of this Act are—
 - (a) to ensure transparency, accountability and sound management of the revenue, expenditure, assets and liabilities of the Legislature;
 - (b) to establish norms and standards for managing the financial affairs of the Legislature;
 - (c) to establish a Service of the Legislature which can enable the Legislature to effectively carry out its functions;
 - (d) to clearly define the roles, functions, and responsibilities of the Speaker of the Legislature, Members of the Legislature, the Secretary to the Legislature, and officials of the Legislature; and
 - (e) to establish a framework for the effective administration of the Legislature.

CHAPTER 2 MATTERS RELATED TO THE REPEAL OF THE NORTH WEST PROVINCIAL LEGISLATURE SERVICE ACT 8 OF 1997

Deeming Provision

- 3. Anything purported to have been done for and on behalf of the Legislature, and any person or persons purported to have been appointed to the staff of the Legislature prior to the coming into operation of this Act, shall be deemed to have been done and/or appointed in terms of the provisions of this Act.

Disestablishment of Bodies Established in terms of Act 8 of 1997

- 4. The Management Board, the Internal Supplies Committee, and the Management Committee, which were established in terms of the North West Provincial Legislature Service Act 8 of 1997, are hereby disestablished.

CHAPTER 3 THE LEGISLATURE SERVICE

Establishment of the Legislature Service

- 5. There is hereby established the Legislature Service, whose principal duties shall be to provide administrative services to the Speaker and other Members of the Legislature.

CHAPTER 4
THE ROLES, FUNCTIONS, AND RESPONSIBILITIES OF THE SPEAKER, MEMBERS OF
THE LEGISLATURE, THE SECRETARY TO THE LEGISLATURE, AND OFFICIALS OF
THE LEGISLATURE

Speaker of the Legislature

6. (1) The Speaker, elected in terms of section 111 and Schedule 3 of the Constitution and the Standing Rules of the Legislature, is the Executing Authority of the Legislature.
- (2) The Speaker has overall responsibility for the Legislature, and is accountable to the Legislature for the sound management of the Legislature. The Speaker shall report to the Legislature as required in terms of this Act or any other applicable national or provincial legislation.
- (3) The Speaker is responsible for the overall strategic direction of the Legislature, and for policies which are adopted by the Legislature which are applicable to the Service and the administration of the Legislature.
- (4) The control of the expenditure and the appropriation of moneys for the Service vests in the Speaker, who is responsible for exercising the Treasury Function for the Legislature.
- (5) The Speaker shall be responsible for ensuring that the Legislature operates in accordance with the Constitution, all applicable national and provincial legislation, and the Legislature's policies.
- (6) For as long as the Speaker is, for any reason, unable to perform the duties of the office, the Deputy Speaker shall perform the duties and exercise the powers of the Speaker.

Secretary to the Legislature

7. (1) The Secretary is the Accounting Officer for the Legislature, who is responsible for
- (a) the collection, receipt, custody and payment of moneys for the services of the Legislature,
 - (b) for the receipt, custody and control of property acquired for the administration of the Legislature and,
 - (c) for keeping of proper accounts in respect of such moneys and property.
- (2) The Secretary is accountable to the Executing Authority for the sound management of the Legislature.
- (3) The Secretary is responsible for-
- (a) providing assistance to the Legislature in carrying out its functions;
 - (b) enforcing the Standing Rules of the Legislature and orders made by the Speaker;
 - (c) providing administrative services to the Speaker and other Members of the Provincial Legislature; and
 - (d) the overall management of the Legislature, and in particular, the financial management of the institution and the management of the Service.
- (4) The Secretary is subject to the Constitution, the provisions of any applicable national or provincial legislation which regulates the financial management of the Provincial Legislatures, the Standing Rules of the Legislature, the policies of the Legislature, and the performance management agreement which the Secretary must sign in terms of the Performance Management Development System in the Legislature.

(5) Provided that the Secretary is unable to exercise his or her powers for any other reason, the Speaker shall appoint any person in the service of the Legislature to act as the Secretary to the Legislature.

General financial management functions

8. The Secretary must ensure that—
- (a) the Legislature's resources are used effectively, efficiently, economically and transparently;
 - (b) full and proper records of the financial affairs of the Legislature are kept;
 - (c) the Legislature maintains effective, efficient and transparent systems of financial management, risk management, internal control and internal audit;
 - (d) the Legislature has appropriate systems to manage the performance of its officials;
 - (e) there are suitable training and awareness programmes related to financial management for officers of the Legislature;

Members of the Legislature

9. The functions and activities of Members of the Legislature shall be conducted in accordance with the Constitution, all applicable national and provincial legislation, the Standing Rules of the Legislature, and rules and policies adopted by the Rules Committee of the Legislature.

Responsibilities of officials

10. (1) Every official in the Legislature, and particularly those assigned financial management responsibilities must—
- (a) comply with the provisions of this Act and all other national and provincial legislation, to the extent applicable to that official;
 - (b) comply with the terms of any delegations in terms of section 16; and
 - (c) take all reasonable steps within that official's area of responsibility to ensure—
 - (i) that the Legislature's system of financial management and internal control is implemented diligently;
 - (ii) that the Legislature's financial and other resources are used effectively, efficiently, economically and transparently;
 - (iii) that 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 Secretary;
 - (iv) that all revenue due to the Legislature is collected; and
 - (v) that the Legislature's assets and liabilities are managed effectively, and that assets are safeguarded and maintained to the extent necessary.

Fiduciary responsibilities

11. (1) The Secretary and all officials in the Legislature must —
- (a) act with fidelity, honesty, integrity and in the best interests of the Legislature in managing its financial affairs;
 - (b) disclose all material facts which are available to that person or reasonably discoverable, and which in any way might influence any decision or action in terms of this Act; and
 - (c) seek to prevent any prejudice to the financial interests and good reputation of the Legislature.
- (2) For the purposes of subsection (1) (b), any disclosure must be made—
- (a) in the case of the Secretary, to the Speaker; and
 - (b) in the case of any other person, to the Secretary.

- (3) No official of the Legislature—
(a) may act in a way that is inconsistent with the Act; or
(b) may use their position or any confidential information obtained in the exercise of their responsibilities for personal gain or to benefit improperly themselves or any other person.

CHAPTER 5 STAFF, THEIR TERMS AND CONDITIONS OF EMPLOYMENT, AND ORGANISATION

Staff of the Legislature

12. (1) The Secretary shall appoint staff required for the proper functioning of the Legislature, in accordance with the organogram of the Legislature as approved by the Speaker in terms of the Constitution and all applicable national legislation and the policies of the Legislature.
- (2) The appointment of:
(a) three Executive Managers of the Legislature shall be made by the Secretary, in consultation with the Speaker.
(b) staff in the Speaker's Office shall be made by the Secretary, upon the instruction of the Speaker.
(c) all other staff members shall be made by the Secretary.
- (3) The promotion, transfer or dismissal of any employee in the Speaker's Office shall be made by the Secretary, after consultation with the Speaker.
- (4) The promotion, transfer or dismissal of any other employee of the Legislature shall be made by the Secretary.
- (5) Any promotion, transfer or dismissal of any employee of the Legislature shall be in accordance with the Constitution, all applicable national legislation and the policies of the Legislature.

Conditions of service of staff

13. (1) The Secretary shall, after consultation with the Speaker, make, and may from time to time vary, policies providing for the conditions of service for employees of the Legislature and regarding the appointment, promotion, demotion, transfer, or dismissal of employees.
- (2) All policies relating to the conditions of service for employees of the Legislature and regarding the appointment, promotion, demotion, transfer or dismissal of employees shall be in accordance with the Constitution and all applicable national and provincial legislation.

Organisation of the Legislature Service

14. The Service shall be organized in accordance with this Act and the organogram of the Legislature, as approved by the Speaker from time to time, which shall set out the posts on the fixed establishment of the Legislature.

Management of the Legislature Service

15. (1) The Secretary may establish structures within the Service to assist with the consideration of issues relating to the management of the Legislature, the development of policies regarding the management of the institution, and the effective running of the institution.

(2) All policies developed relating to the Legislature Service and the management of the Legislature shall be subject to the final approval of the Speaker, and shall be in accordance with the Constitution and all applicable national and provincial legislation.

Delegation of Powers

16. (1) The Secretary may delegate any powers or duties conferred on the Secretary subject to any limitations which may be contained in applicable national legislation to an official of the Legislature in accordance with a system of delegation.
- (2) The system of delegation must be developed with the concurrence of the Speaker and must—
- (a) maximize administrative and operational efficiency; and
 - (b) provide adequate checks and balances in the financial management of the Legislature.
- (3) The Secretary 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 Secretary may impose;
 - (c) may be to an individual or to the holder of a specific post in the Service;
 - (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 Service; and
 - (e) does not divest the Secretary of responsibility for the exercise of the delegated power or the performance of the delegated duty.
- (5) The Secretary may confirm, vary or revoke any decision taken by an official in terms of a delegation under subsection (2), subject to any rights that may have become vested as a consequence of the decision.

CHAPTER 6 PLANNING AND BUDGETING

Preparation of strategic plan, annual performance plan and budget

17. The Speaker must—
- (a) oversee the preparation of the Legislature's strategic plan, annual performance plan and budget in accordance with this Chapter;
 - (b) approve the strategic plan, annual performance plan and budget for submission to the Legislature.

Strategic plan

18. (1) Within six months after a general election, or by another date determined by the Legislature, the Secretary must prepare and present a strategic plan for the Legislature's administration to the Speaker.
- (2) The strategic plan for the Legislature's administration must—
- (a) cover the following five years or other period determined by the Legislature,
 - (b) specify the priorities of the Legislature's administration for the period of the plan;
 - (c) include objectives and outcomes for each programme of the Legislature;
 - (d) include multi-year projections of revenue and expenditure; and
 - (e) include performance measures and indicators for assessing the administration's performance in implementing the strategic plan.

Annual performance plan

19. (1) At least ten months prior to the start of the financial year, the Secretary must prepare a draft annual performance plan for the Legislature and present it to the Speaker.
- (2) The annual performance plan must—
- (a) cover the following financial year and the two financial years thereafter or other period determined by the Legislature;
 - (b) indicate any changes to the Legislature's priorities as set out in the strategic plan.
 - (c) update the projections of revenue and expenditure presented in the strategic plan;
 - (d) specify performance targets related to each of the performance measures and indicators for assessing the Legislature's performance in achieving its objectives and outcomes; and
 - (e) provide details of the Legislature's donor funded projects, including
 - (i) the donors and the amounts being given;
 - (ii) the purposes of the projects; and
 - (iii) performance measures and indicators for assessing the Legislature's performance in achieving the purposes of the projects.

Annual Budget

20. (1) At least ten months prior to the start of the financial year, the Accounting Officer must prepare a draft budget for the Legislature and present it to the Speaker.
- (2) The Legislature's budget must—
- (a) cover the following financial year and the two financial years thereafter or other period determined by the Legislature;
 - (b) specify the Legislature's expected revenues, distinguishing between—
 - (i) funds to be appropriated through the annual provincial budget;
 - (ii) funds that are a direct charge against the Provincial Revenue Fund;and
 - (iii) funds derived from the Legislature's own revenue sources, excluding donor funds;
 - (c) specify the Legislature's proposed expenditure requirements per main division within the budget, distinguishing between the sources of funds identified in paragraph (b);
 - (d) specify the purpose of each main division within the budget and provide explanations and other information substantiating the amounts proposed in terms of paragraphs (b) and (c);
 - (e) specify—
 - (i) allocations of support for political parties represented in the Legislature;
 - (ii) constituency funds for political parties; and
 - (iii) transfers to other entities;
 - (f) contain a schedule of the planned expenditure under the Legislature's donor funded projects; and
 - (g) be in accordance with the format prescribed under section 27(3) of the Public Finance Management Act.

Annual appropriations and approvals

21. (1) For each financial year, the Legislature must—
- (a) appropriate the funds identified in terms of section 20(2)(b)(i) in the provincial annual budget referred to in section 27 (2) of the Public Finance Management Act;
 - (b) approve the use of the funds identified in terms of section 20(2)(b)(iii) before the start of the financial year.

- (2) Any revision of an appropriation in terms of subsection (1) must be made by a provincial adjustments budget referred to in section 31 of the Public Finance Management Act.

Expenditure before provincial annual budget is passed

22. (1) If the provincial annual budget is not passed before the start of the financial year, funds may be withdrawn from the Provincial Revenue Fund for the requirements of the Legislature during that financial year as direct charges against the Fund until the budget is passed.
- (2) Funds withdrawn from the Provincial Revenue Fund in terms of subsection (1) -
- (a) may be used only for services for which funds were appropriated in the previous annual budget or adjustments budget; and
- (b) may not—
- (i) during the first four months of that financial year, exceed 45 per cent of the total amount appropriated in the previous annual budget;
- (ii) during each of the following months, exceed ten per cent of the total amount appropriated in the previous annual budget; and
- (iii) in aggregate, exceed the total amount appropriated in the previous annual budget.
- (3) The funds provided for in subsection (1) are not additional to funds appropriated for the relevant financial year, and any funds withdrawn in terms of that subsection must be regarded as forming part of the funds appropriated in the budget for that financial year.

Unauthorized expenditure

23. (1) Unauthorized expenditure incurred by the Legislature does not become a charge against the Provincial Revenue Fund, unless—
- (a) the expenditure is an overspending of a vote and the Legislature appropriates an additional amount for that vote which covers the overspending; or
- (b) the expenditure is unauthorized for another reason and the Legislature authorizes the expenditure as a direct charge against the Provincial Revenue Fund.
- (2) The Legislature must advise the Provincial Treasury of any unauthorized expenditure that has been authorized in terms of subsection (1).
- (3) If the Legislature authorizes unauthorized expenditure contemplated in sub-section (1) but does not appropriate an additional amount covering the amount of the unauthorized expenditure, the unauthorized expenditure becomes a charge against the funds of the Legislature.

Virement between main divisions within vote

24. (1) The Secretary may use a saving in the total amount appropriated under a main division within the Legislature's vote towards defraying excess expenditure under another main division within the vote, unless the Speaker directs otherwise.
- (2) The amount of a saving under a main division of the Legislature's vote that may be used in terms of subsection (1), may not exceed eight per cent of the amount appropriated under that main division.
- (3) This section does not authorize the use of a saving of an amount—
- (a) specifically and exclusively appropriated for a purpose mentioned under a main division within the vote;
- (b) appropriated for transfer to another institution;
- (c) appropriated for capital expenditure in order to defray current expenditure; or

(d) that is a direct charge against the Provincial Revenue Fund in order to supplement the Legislature's appropriated funds.

(4) The Speaker may make regulations or issue instructions concerning the application of this section.

Roll-over of unspent funds

25. (1) Funds appropriated for, but not spent in, a particular financial year may be rolled over to a subsequent year subject to—
- (a) the approval of the Speaker; and
 - (b) reappropriation in the adjustments budget in terms of section 30 of the Public Finance Management Act.
- (2) Any roll over must comply with the following conditions:
- (a) savings in respect of funds that are a direct charge against the Provincial Revenue Fund may not be rolled over.
 - (b) unspent funds on payments for capital assets may be rolled over only to finalise projects or asset acquisitions still in progress.
 - (c) savings on transfers and subsidies may not be rolled over for purposes other than originally appropriated.
 - (d) savings on funds appropriated for personnel expenditure may not be rolled over.
 - (e) a maximum of five per cent of the Legislature's funds appropriated for goods and services may be rolled over.
- (3) The Speaker must submit information on the roll-over of unspent funds to the Provincial Treasury on or before the last working day of April for inclusion in the appropriate provincial adjustments budget.
- (4) The Legislature's own revenues that are approved for in respect of a particular financial year, but not spent in that year, may not be rolled over but must be approved in the following financial year

Surrender of voted surplus funds

26. (1) Funds that are a direct charge against the Provincial Revenue Fund and that are unspent at the end of a financial year must be returned to the Provincial Revenue Fund.
- (2) Appropriated funds that are unspent at the end of a financial year and are not rolled over to a subsequent financial year in accordance with section 24 must be returned to the Provincial Revenue Fund.

CHAPTER 7 CASH MANAGEMENT AND INVESTMENT

Cash management and investment policy

27. (1) The Speaker must prescribe an appropriate policy—
- (a) to ensure efficient and effective banking and cash management; and
 - (b) for investing money not immediately required.
- (2) The Secretary is responsible for establishing systems and procedures for the effective implementation of the policy prescribed in terms of subsection (1).

Opening of bank accounts

28. (1) The Secretary, with the approval of the Speaker, and in accordance with the policy referred to in section 27, must open and maintain—
- (a) a bank account into which all money received by the Legislature must promptly be paid; and
 - (b) such other bank accounts as are necessary for the effective and efficient management of the Legislature's funds.
- (2) The Legislature may not open a bank account—
- (a) abroad;
 - (b) with an institution not registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); or
 - (c) otherwise than in the name of the Legislature.
- (3) A bank account opened in terms of this section does not form part of the Provincial Revenue Fund.

Control of bank accounts

29. The Secretary—
- (a) must administer all bank accounts of the Legislature;
 - (b) is accountable to the Speaker for the Legislature's bank accounts; and
 - (c) must enforce compliance with section 30.

Withdrawals from bank accounts

30. (1) Only the Secretary, or an official to whom that power has been delegated in terms of section 16, may withdraw money, or authorise the withdrawal of money, from any of the Legislature's bank accounts.
- (2) A delegation in terms of subsection (1) must be in accordance with the policy made in terms of section 27.
- (3) Money may be withdrawn from one of the Legislature's bank accounts only for—
- (a) defraying expenditure in accordance with the Legislature's approved budget or authorized for the Legislature as a direct charge against the Provincial Revenue Fund;
 - (b) defraying expenditure incurred in relation to a donor funded project;
 - (c) refunding money incorrectly paid into a bank account;
 - (d) to make other refunds approved by the Speaker; or
 - (e) cash management or investment purposes in accordance with the policy made in terms of section 27.

Restrictions on borrowing, guarantees and other transactions

31. (1) The Legislature may not—
- (a) borrow money;
 - (b) issue a guarantee, indemnity or security, or
 - (c) enter into any other similar transaction that binds or may bind it to any future financial commitment.
- (2) The Legislature is not bound by a loan transaction, guarantee, indemnity, security or other transaction entered into or concluded in breach of subsection(1).

Requisitioning of Funds

32. The Speaker must determine a process for requisitioning funds that provides for sound cash-flow management.

**CHAPTER 8
FINANCIAL ARRANGEMENTS****Asset and liability management**

33. (1) The Secretary is responsible for managing—
(a) The Legislature's assets, including safeguarding and maintaining those assets; and
(b) The Legislature's liabilities.
- (2) For the purposes of subsection (1), the Secretary must ensure that—
(a) The Legislature maintains a management, accounting and information system that accounts for its assets and liabilities;
(b) The Legislature's assets and liabilities are valued in accordance with generally recognised accounting practice; and
(c) The Legislature maintains a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed.

Revenue management

34. (1) The Secretary is responsible for managing the revenue of the Legislature.
- (2) For the purposes of subsection (1), the Secretary must ensure that—
(a) the Legislature has effective revenue collection systems;
(b) all money received is deposited promptly in accordance with this Act into the bank account contemplated by section 28(1)(a);
(c) the Legislature maintains a management, accounting and information system which—
(i) recognizes revenue when it is earned; and
(ii) accounts for receipts of revenue;
(d) the Legislature maintains a system of internal control in respect of revenue; and
(e) all revenue received by the Legislature is reconciled at least on a weekly basis.

Management of debtors

35. (1) The Secretary must take effective and appropriate steps to collect all monies due to the Legislature including—
(a) maintaining proper accounts and records of all debtors, including amounts received in part payment; and
(b) if appropriate, instituting legal proceedings.
- (2) The Secretary may settle or write off a debt only in accordance with a prescribed policy.
- (3) Interest must be charged on any debt owed to the Legislature in accordance with a prescribed policy.

Expenditure management

36. (1) The Secretary is responsible for managing the expenditure of the Legislature.

- (2) For the purpose of subsection (1), the Secretary must ensure that—
- (a) the Legislature maintains an effective system of expenditure control, which includes procedures for the approval and authorization of the withdrawal and payment of funds;
 - (b) The Legislature maintains a management, accounting and information system which—
 - (i) recognizes expenditure when it is incurred;
 - (ii) accounts for creditors of the Legislature; and
 - (iii) accounts for payments made by the Legislature;
 - (c) the Legislature maintains a system of internal control in respect of creditors and payments;
 - (d) the Legislature makes payment—
 - (i) directly to the person to whom it is due unless agreed otherwise or for good reason; and
 - (ii) either electronically or by way of non-transferable cheques, but cash payments and payments by way of cash cheques may be made for exceptional reasons, and only up to a prescribed limit;
 - (e) all amounts owed by the Legislature are paid within 30 days of receiving the relevant invoice or statement, unless agreed otherwise; and
 - (f) all financial accounts of the Legislature are closed at the end of each month and reconciled with its records.

Support for political parties

37. (1) Allocations for support for political parties represented in the Legislature may be used only in accordance with a policy adopted by the Legislature.
- (2) Thirty days prior to the beginning of each financial year, each political party must submit to the Secretary an expenditure plan approved by the caucus of the party, that conforms with the policy contemplated by sub-section (1).

Constituency funds

38. (1) Constituency funds transferred to political parties represented in the Legislature may be used only in accordance with a policy adopted by the Legislature.
- (2) Before transferring any funds to a party, the Secretary must—
- (a) obtain a written assurance from the party it has financial management systems that will enable it to account separately for the use of constituency funds; or
 - (b) if such an assurance is not or cannot be given, the Secretary must render the transfer of the funds subject to conditions requiring the political party to establish and implement the required financial management systems.
- (3) Two months after the end of the financial year, each political party must submit to the Speaker and the Auditor-General financial statements in the prescribed format reflecting the use of the constituency funds.
- (4) The Auditor-General must—
- (a) audit the financial statements;
 - (b) submit an audit report on those statements to the Speaker within two months of receiving them; and
 - (c) recover the audit costs from the Legislature.
- (5) Within five days of receiving an audit report, the Speaker must table it and the relevant financial statements in the Legislature, unless the Legislature is then in recess, in which case the Speaker must table the report in the first sitting of the Legislature thereafter.

(6) Should a party not submit the financial statements to the Secretary within two months after the end of a financial year, the party will forfeit one tenth of its constituency funds for each month or part thereof that the financial statements are late.

Transfers

39. Before transferring any funds to any entity, whether within or outside government, the Secretary must obtain—
- (a) 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.

Budget implementation

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

Instructions from the Speaker with financial implications

41. (1) Any directive by the Speaker to the Secretary that has financial implications must be in writing.
- (2) If implementation of a directive is likely to result in unauthorized expenditure, the Secretary will be responsible for any resulting unauthorized expenditure, unless the Secretary has informed the Speaker in writing of the likelihood of that unauthorized expenditure.
- (3) If the Speaker decides to proceed with the implementation of such a directive, the decision and the reasons for it, must be in writing, and the Secretary must promptly file a copy of this document with the Auditor-General.

Impending shortfalls and overspending

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

CHAPTER 9 SUPPLY CHAIN MANAGEMENT

Application of this Chapter

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

Supply' chain management policy

44. The Speaker must prescribe a supply chain management policy which—
- (a) is fair, equitable, transparent, competitive and cost effective;
 - (b) promotes high ethical standards and prohibits fraud, corruption, favoritism and unfair and irregular practices;
 - (c) requires disclosure of and deals appropriately with conflicts of interests;
 - (d) establishes appropriate supply chain management processes and procedures, including—
 - (i) demand management;
 - (ii) acquisition management;
 - (iii) logistics management;
 - (iv) disposal management;
 - (v) risk management; and
 - (vi) regular assessment of supply chain performance;
 - (e) complies with other applicable legislation;
 - (f) is consistent with the supply chain management policy issued in terms of the Public Finance Management Act; and
 - (g) covers at least the matters specified in Schedule 1 to this Act.

Implementation of system

45. The Secretary must—
- (a) implement the supply chain management policy;
 - (b) establish capacity in the Legislature to implement the policy;
 - (c) take all reasonable steps to ensure that proper mechanisms are in place to minimize dishonesty, favoritism and unfair and irregular practices;
 - (d) ensure that contracts concluded for the supply of services and goods are properly enforced;
 - (e) monitor the performance of contractors; and
 - (f) regularly report to the Speaker on—
 - (i) the management of contracts and the performance of contractors; and
 - (ii) the implementation of the policy.

Supply Chain Management Committee

46. In consultation with the Speaker, the Secretary may-
- (a) constitute a Supply Chain Management Committee for the procurement of the services and supplies for the Legislature;
 - (b) determine the size, structure, composition and duration of the Supply Chain Management Committee;
 - (c) determine the procedures to be followed by the Supply Chain Management Committee in procuring the required services and supplies; and
 - (d) determine the terms, conditions and other specification of the procurement contracts;

Provided that the system used by the Supply Chain Management Committee shall be fair, equitable, transparent, competitive and cost-effective, and in accordance with all applicable requirements set out in national or provincial legislation, and the supply chain management policy for the Legislature.

Unsolicited offers

47. (1) The Speaker may prescribe procedures for considering offers to supply goods or services that are unsolicited or are made otherwise than in accordance with the Legislature's prescribed procurement processes.
- (2) The Legislature—
- (a) is not obliged to consider any offer contemplated in subsection (1);
 - (b) may consider an offer contemplated in sub-section (1) only in accordance with the prescribed procedure.

Tenders not recommended

48. (1) The Secretary must notify the Auditor-General and the Speaker in writing if a contract is concluded in respect of a tender, quotation, or other bid other than the one recommended in terms of the supply chain management policy.
- (2) Sub-section (1) does not apply if a contract was concluded in order to rectify an irregularity.

Members of the Legislature barred from serving on tender committees

49. No Member of the Legislature may—
- (a) be a member of a committee evaluating or approving tenders, quotations, contracts or other bids for the Legislature.
 - (b) attend any meeting of such committee as an observer; or
 - (c) participate in any other way in evaluating or approving tenders, quotations, contracts or other bids for the Legislature.

Interference

50. No person may—
- (a) interfere with the supply chain management system of the Legislature;
 - (b) impede the Secretary in fulfilling the responsibilities of the Secretary in terms of this Chapter; or
 - (c) amend or tamper with any tender, quotation, contract or bid after its submission.

Prohibition on contracts

51. No contract to provide goods or services to the Legislature may be awarded to a Member of Parliament, to a Member of a Provincial Legislature, to a Municipal Councilor, to a person in the employ of the State or to any entity in which such a person is a Director or has a controlling or other substantial interest.

CHAPTER 10
AUDIT COMMITTEE AND INTERNAL AUDIT UNIT

Establishment of audit committee

52. (1) The Legislature must have an audit committee appointed by the Speaker.
- (2) The committee must—
- (a) be constituted in a manner that ensures its independence; and
 - (b) consist of at least six persons with appropriate experience.
- (3) More than half of the members of the committee must be individuals who—

- (a) are not employed by the Legislature or the state and are not Members of Parliament, a Provincial Legislature or a municipal council; and
- (b) have no personal or financial interest in any matter related to the financial management of the Legislature.

(4) The Speaker must appoint one of the members contemplated by subsection (3) as the chairperson of the committee.

(5) The terms of appointment and remuneration of members of the audit committee contemplated in subsection (3) must be consistent with the requirements for audit committees prescribed under the Public Finance Management Act.

(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

53. (1) The audit committee must—
- (a) establish an audit charter to—
 - (i) guide its audit approach and 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 Secretary;
 - (b) carry out such investigations into the Legislature's financial and risk management as it considers necessary or are requested by the Secretary;
 - (c) in the annual report of the Legislature, comment on—
 - (i) the effectiveness of internal control;
 - (ii) the quality of financial management and reports compiled by the Secretary in terms of this Act and other applicable national and provincial legislation; and
 - (iii) the quality of the annual financial statements;
 - (d) report to and advise the Secretary on matters relating to the financial and risk management of the Legislature; and
 - (e) communicate any concerns it deems necessary to the Speaker and the Auditor-General.
- (2) In performing its functions, the audit committee must—
- (a) have access to the financial records and other relevant information of the Legislature;
 - (b) must meet as often as required to perform its functions, but at least four times a year; and
 - (c) must liaise with—
 - (i) the internal audit unit of the Legislature; and
 - (ii) the person designated by the Auditor-General to audit the financial statements of the Legislature;

Allegations against the Secretary

54. If the audit committee becomes aware of information implicating the Secretary in fraud, corruption or gross negligence, it must report this promptly to the Speaker.

Internal audit unit

55. (1) The Legislature must have an internal audit unit established by the Secretary, which must conduct internal audits in accordance with the relevant standards prescribed for public entities in terms of the Public Finance Management Act.

- (2) The unit must prepare for the approval of the audit committee—
 - (a) operating procedures to guide its relationship with the administration of the Legislature;
 - (b) a three-year risk-based audit plan; and
 - (c) an internal audit program for each financial year setting out the proposed scope of each audit.

- (3) The unit must report quarterly to the audit committee on its performance against the annual audit plan.

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

CHAPTER 11 REPORTING AND AUDITING

Part 1: In-year reporting

Monthly financial statements

56. (1) Within fifteen days after the end of each month, the Secretary must submit a financial statement to the Speaker, in a format determined by the Speaker, reflecting the state of the Legislature's finances for that month and for the financial year to date and specifying—
- (a) actual revenue by revenue source;
 - (b) actual expenditure by main division;
 - (c) actual capital expenditure by main division; and
 - (d) when necessary, an explanation of—
 - (i) any material variances from the Legislature's projected revenue by source, and from the Legislature's expenditure projections by main division; and
 - (ii) any remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within the Legislature's approved budget.
- (2) The 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 Legislature's budget.

Quarterly performance reports

57. Within 30 days of the end of each quarter, the Secretary must report to the Speaker on the Legislature's performance in implementing the annual performance plan in that quarter.

Mid-year budget and performance assessment

58. (1) Before 31 October of each year, the Secretary must submit to the Speaker a report that assesses the performance of the Legislature's administration during the first half of the financial year, taking into account—
- (a) the monthly statements referred to in sections 37 and 38 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 Secretary must—
 - (a) recommend whether an adjustments budget may be necessary; and
 - (b) revise projections for revenue and expenditure to the extent that this may be necessary.

Submission of reports to the Legislature

59. The Speaker must table the monthly, quarterly and mid-year reports in the Legislature within five working days of receiving the reports, unless the Legislature is currently in recess, in which case the reports shall be tabled at the first sitting of the Legislature after the Legislature is back in session.

Part 2: Annual report, financial statements and auditing

Preparation of annual reports

60. (1) For each financial year, the Secretary must prepare an annual report.
- (2) The purpose of an annual report is to—
 - (a) provide a record of the activities of the Legislature's administration during the financial year to which the report relates;
 - (b) provide a report on performance of the Legislature's administration; and
 - (c) promote accountability for decisions made during the year by the Legislature's administration.
 - (3) The annual report must be based on the annual performance plan and must contain—
 - (a) the annual financial statements of the Legislature for the relevant financial year as submitted to the Auditor-General;
 - (b) any explanations that may be necessary to clarify the financial statements;
 - (c) the Auditor-General's audit report on those financial statements;
 - (d) an assessment by the Secretary of the performance of the Legislature during that financial year against the objectives and outcomes identified in 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 (b);
 - (f) the audit committee's report; and
 - (g) any other prescribed information.

Preparation of financial statements

61. (1) For each financial year, the Secretary must prepare annual financial statements in accordance with generally recognized accounting practice and in the format prescribed in terms of the Public Finance Management Act.
- (2) The notes to the annual financial statements must—
 - (a) include particulars of the remuneration of officials of the Legislature, whether financial or in kind;
 - (b) disclose in respect of each bank account held by the Legislature during the relevant financial year—
 - (i) the name of the bank where the account is or was held, and the type of account; and
 - (ii) year opening and year end balances in each of these bank accounts;and
 - (c) provide a summary of all investments of the Legislature as at the end of the financial year; and

- (d) provide particulars of—
- (i) any material losses and any material unauthorized, irregular or fruitless and wasteful expenditures that occurred during the financial year and whether these are recoverable;
 - (ii) any criminal or disciplinary steps instituted as a result of such losses or unauthorized, irregular or fruitless and wasteful expenditures; and
 - (iii) any material losses written off.

Submission of annual financial statements

62. (1) Within two months after the end of the financial year, the Secretary 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

63. (1) The Auditor-General must—
- (a) audit the financial statements submitted in terms of section 62; and
 - (b) submit an audit report on those statements to the Speaker 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 Speaker. The Speaker must promptly table the report in the Legislature.
- (3) Once the Auditor-General has submitted an audit report to the Speaker, no person other than the Auditor-General may alter the report or the annual financial statements to which the report relates.

Submission of annual report

64. The Secretary must submit the Legislature's annual report to the Speaker within five months of the end of the financial year concerned.

Tabling of annual report

65. (1) The Speaker must table the annual report in the Legislature within five working days of receiving it, unless the Legislature is in recess, in which case the report shall be tabled at the first sitting of the Legislature after the Legislature is back in session.
- (2) The annual report, including the audited financial statements and audit report, must be made public.

Issues raised in audit reports

66. The Secretary must—
- (a) promptly address any issues raised by the Auditor-General in an audit report; and
 - (b) advise the Speaker of the steps taken to address the issues.

Consequences of non-compliance with certain provisions

67. (1) If the Secretary does not submit the annual financial statements to the Auditor-General in accordance with section 62—
- (a) the Secretary must promptly submit a written explanation setting out the reasons for the failure to—
 - (i) the Auditor-General; and
 - (ii) the Speaker; and
 - (b) the Speaker—
 - (i) must report to the Legislature concerning the 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 Secretary or other person responsible for the failure; and
 - (c) the Auditor-General may issue a special report on such failure to the Legislature which must be made public.
- (2) If the Speaker does not table the annual report in the Legislature in accordance with section 65—
- (a) the Speaker—
 - (i) must table a report on the failure in the Legislature;
 - (ii) must take appropriate steps to ensure that the annual report is tabled in the Legislature; and
 - (iii) may order that disciplinary steps be taken against the Secretary or other person responsible for the failure; and
 - (b) the Auditor-General—
 - (i) must submit the audited financial statements and audit report to the Legislature for tabling; and
 - (ii) may issue a special report on the delay.

Part 3: General reporting responsibilities**Reporting of irregularities**

68. The Secretary must report particulars of any unauthorized, irregular or fruitless and wasteful expenditure to the Speaker immediately on discovery.

Other information

69. The Secretary must comply with any request by the Speaker or the Auditor-General for information, returns, documents, explanations and motivations.

CHAPTER 12 REGULATIONS AND INSTRUCTIONS

Regulations and instructions

70. (1) The Speaker may make regulations or issue instructions not inconsistent with this Act concerning—
- (a) any matter in respect of which this Act authorizes regulations or instructions;
 - (b) the handling of, and control over, the assets of the Legislature;
 - (c) the improvement and maintenance of the assets of the Legislature;
 - (d) the alienation, letting or other disposal of the assets of the Legislature;
 - (e) an appropriate supply chain management system for the Legislature which complies with Chapter 9;
 - (f) the financial management of the provision of support services to Members;
 - (g) the rendering of free services by the Legislature's administration;
 - (h) the determination of any scales of fees, other charges or rates relating to services provided by the Legislature's administration;
 - (i) the writing off of, or settling of claims in respect of, losses of money or other assets of the Legislature or amounts owed to the Legislature;
 - (j) liability for losses and damages, and procedures for recovery, including the recovery of fruitless and wasteful, unauthorized and irregular expenditure;
 - (k) the cancellation or variation of contracts to the detriment of the Legislature;
 - (l) the settlement of claims by or against the Legislature;
 - (m) the waiver of claims by the Legislature;
 - (n) the remission of money due to the Legislature;
 - (o) gifts or donations to officials of the Legislature;
 - (p) vouchers or other proofs of receipts or payments, which are defective or have been lost or damaged;
 - (q) varying the time period within which any act must be performed in terms of this Act if it is necessary to achieve conformity with the budgeting or accounting cycles applicable to the public sector; and
 - (r) any other matter concerning the financial or general management of the Legislature that may facilitate the application of this Act.
- (2) Regulations in terms of subsection (1) may prescribe that the prior approval of the Speaker must be obtained for particular actions.
- (3) Regulations issued by the Speaker in terms of sub-section (1) may come into effect only after they have been approved by the Legislature.
- (4) The Secretary must publish all regulations issued by the Speaker after their approval by the Legislature.

CHAPTER 13 FINANCIAL MISCONDUCT

Part 1; Disciplinary proceedings

Financial misconduct by the Secretary

71. (1) The Secretary commits an act of financial misconduct if the Secretary deliberately or negligently—
- (a) contravenes a provision of this Act or other applicable national or provincial legislation that regulates the financial management of provincial legislatures;
 - (b) fails to comply with a duty imposed by a provision of this Act or other applicable national or provincial legislation on the Secretary as accounting officer;

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

(2) The Speaker must—

- (a) investigate promptly any allegation of financial misconduct against the Secretary, 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

72. (1) An official of the Legislature to whom a power or duty was delegated in terms of section 16, commits an act of financial misconduct if that official deliberately or negligently—
- (a) fails to carry out the delegated power or duty;
 - (b) contravenes or fails to comply with a condition of the delegated power or duty;
 - (c) makes, or permits or instructs another official of the Legislature to make, an unauthorized, irregular or fruitless and wasteful expenditure; or
 - (d) provides incorrect or misleading information in any document submitted to the Secretary.

(2) The Secretary must—

- (a) investigate any allegation of financial misconduct against an official unless it is obviously unfounded; and
- (b) if the investigation warrants such a step, institute disciplinary proceedings within 30 days in accordance with any applicable systems and procedures.

Part 2: Criminal proceedings

Offences

73. (1) It is an offence for the Secretary to—
- (a) deliberately or in a grossly negligent way—
 - (i) contravene or fail to comply with a provision of section 8, 33(2)(a) or (c), 34(2)(a) or (c) or 36 (2) (a), (b), (c), (d) or (f);
 - (ii) fail to take all reasonable steps to prevent unauthorized, irregular or fruitless and wasteful expenditure; or
 - (b) contravene section 11 (3) (b);
 - (c) fail to take all reasonable steps to prevent corrupt practices —
 - (i) in the management of Legislature's assets or receipt of money; or
 - (ii) in the implementation of the Legislature's supply chain management system;
 - (d) deliberately mislead or withhold information from the Speaker or Auditor-General on any bank accounts of the Legislature or on money received or spent by the Legislature; or
 - (e) deliberately provide false or misleading information in any document which in terms of a requirement of this Act must be submitted to the Speaker or Auditor-General.
- (2) It is an offence for any official—
- (a) to whom a power or duty is delegated in terms of section 16, deliberately or in a grossly negligent way to contravene or fail to comply with the delegation or a condition of the delegation; or
 - (b) to contravene section 11(3)(b).
- (3) It is an offence for any person to contravene section 50 or 63 (3).

Penalties

74. A person convicted of an offence in terms of section 73 is liable to imprisonment for a period not exceeding five years or to an appropriate fine determined in terms of applicable legislation or both.

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

75. (1) The Speaker, the Secretary 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 Legislature may recover from the Secretary or other official, any loss or damage suffered by it because of the deliberate or negligent unlawful actions of the Secretary or other official when performing a function in terms of this Act.

Repeal of Laws

76. The laws mentioned in the first and second columns of Schedule 2 are hereby repealed to the extent indicated in the third column of Schedule 2.

Transitional provision

77. Anything purported to have been done for and on behalf of the Legislature, and any person or persons appointed to the staff of the Legislature in terms of this Act, prior to the commencement of this Act, shall be deemed to have been done or appointed in terms of the provisions of this Act.

Short Title and Commencement

78. This Act is called the North West Provincial Legislature Management Act, 3 of 2007 and shall come into operation on the 1st of April 2008.

SCHEDULE 1

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

The Legislature's supply chain management policy must cover the following matters—

- (a) the range of supply chain management processes that the Legislature may use, including tenders, quotations, auctions and other types of competitive bidding;
- (b) when the Legislature may or must use a particular type of process;
- (c) procedures and mechanisms for each type of process;
- (d) procedures and mechanisms for more flexible processes where the value of a contract is below a prescribed amount;
- (e) open and transparent pre-qualification processes for tenders or other bids;
- (f) competitive bidding processes in which only pre-qualified persons may participate;
- (g) bid documentation, and the advertising of and invitations for contracts;
- (h) procedures and mechanisms for-
 - (i) the opening, registering and recording of bids in the presence of interested persons;
 - (ii) the evaluation of bids to ensure best value for money;
 - (iii) negotiating the final terms of contracts; and
 - (iv) the approval of bids;
- (i) screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed value;
- (j) compulsory disclosure of any conflicts of interests prospective contractors may have in specific tenders;
- (k) the circumstances in which prospective contractors may be excluded from being considered for any contract on account of a conflict of interest;
- (l) the consequences of failing to disclose conflicts of interest in accordance with the Policy;
- (m) participation in the supply chain management system of persons who are not officials of the Legislature or employed by the state;
- (n) the barring of persons from participating in tendering or other bidding processes, including persons-
 - (i) convicted for fraud, corruption or any other crime involving dishonesty in the previous five years;
 - (ii) who willfully breached a contract with an organ of state during the previous five years; or
 - (iii) whose tax matters are not cleared by South African Revenue Service;
- (o) measures for—
 - (i) combating dishonesty, favoritism and unfair and irregular practices in supply chain management; and
 - (ii) promoting ethics of officials of the Legislature and others involved in supply chain management;
- (p) the invalidation of recommendations or decisions that were made, taken or in any way influenced by—
 - (i) Members of the Legislature in contravention of this Act or any applicable code of conduct for Members of the Legislature;
 - (ii) officials of the Legislature in contravention of this Act or any applicable code of conduct for officials of the Legislature;
- (q) the procurement of goods and services by the Legislature through contracts procured by other organs of state;
 - (i) contract management and dispute settling procedures;
 - (ii) the delegation of the Legislature's supply chain management powers and duties to officials of the Legislature; and
 - (iii) the circumstances in which a contract or agreement procured through the supply chain management policy of the Legislature may be amended by the parties.

SCHEDULE 2**LEGISLATION REPEALED**

No and Year of Act	Short Title	Extent of Repeal
Act No. 8 of 1997	North West Provincial Legislature Service Act, 1997	The whole
Act No. 4 of 1997	North West Provincial Exchequer Act , 1994	Section 15A

GENERAL NOTICE

NOTICE 129 OF 2010

Notice of publication of the following Bills is hereby given in terms of *Rule 203 of the Standing Rules* of the North West Provincial Legislature:

1. North West Provincial Legislature Management Amendment Bill, 2010.
2. North West Petitions bill, 2010.
3. North West Political Party Fund Bill, 2010.

Consistent with the constitutional obligation charged upon the North West Provincial Legislature, that of affording the citizens a role in the process of lawmaking, we thus accordingly invite written presentations and or inputs to the Bills as appearing above, and such written presentations and or inputs should be forwarded to the office of the Speaker of the North West Provincial Legislature on or before **11 May 2010**.

The presentations and or inputs must be sent to the following address:

**The Manager
Office of the Speaker
North West Provincial Legislature
Private Bag x 2018
Mmabatho
2735**

Alternatively by fax to the following fax number:
(018) 392 7166



**Ms M. Gaoretelelwe
Acting Secretary: NWPL**

NORTH WEST PROVINCIAL LEGISLATURE MANAGEMENT AMENDMENT BILL, 2010

Herein thus, to amend the North West Provincial Legislature Management Act 3 of 2007, so as to fully comply with the norms and standards for financial management of provincial legislatures as prescribed in the Financial Management of Parliament Act of 2008 (the Act)

GENERAL EXPLANATORY NOTE:

[] Words in square brackets indicate omissions from enactments
_____ Words underlined with a solid line indicate insertions in existing enactments.

Be it enacted by the North West Provincial Legislature as follows:

With exception of the definitions section, wherever in the Act reference is made to [the Speaker], the latter shall be substituted by "Executive Authority", and the same shall apply to the reference to [the Secretary], which shall be substituted by "the Accounting Officer".

The following subsection shall be added to section 6:

6 (7). The Executive Authority appoints the Accounting Officer.

The following subsection shall be added to section 8:

8 (1) The [Secretary] Accounting Officer must ensure that -

(f).unauthorized, irregular and fruitless expenditure and other losses are prevented, and appropriate steps are taken where such expenditure has occurred;

(g).disciplinary action is instituted against an employee of the Legislature who has allegedly committed an act of financial misconduct, and

(h).when appropriate, criminal proceedings are instituted against any person who has allegedly committed an offence in terms of section 74.

The following new section shall be added, which shall be section 9, and the existing section 9 shall be section 10, and all other subsequent sections shall follow such numerical arrangement:

9(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 one month after the Accounting Officer is employed and thereafter within one month after the start of each financial year;

(b).specify performance standards linked to the objectives and targets of the Legislature’s performance plan for the financial year;

(c).provide for an annual assessment of the Accounting Officer’s performance by the Executive Authority; and

(d). specify the consequences of substandard performance.

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

(4). The annual assessment of the Accounting Officer’s performance must take cognizance of the audit report on the annual financial statements of the Legislature.

The following subsection shall be added to section 17:

17.(1). The [Speaker] Executive Authority must –

(c). table the strategic plan and annual performance plan in the Legislature.

19.(1).The [the Secretary] Accounting Officer must, within eight months prior to the start of the financial year, prepare a draft annual performance for the Legislature and present it to the [Speaker] Executive Authority.

[26.(1). Funds that are a direct charge against the Provincial Revenue Fund and that are unspent at the end of the financial year must be returned to the Provincial Revenue Fund.

(2). Appropriated funds that are unspent at the end of the financial year and are not rolled over to a subsequent financial year in accordance with section 24 must be returned to the Provincial Revenue Fund.]

The above section and its heading shall be substituted by the following heading and section:

Treatment of unspent funds

27(1).The Legislature is not required to return to the Provincial Revenue Fund any money appropriated or approved for a particular financial year but not spent in that year.

(2). Funds appropriated for, but not spent in a particular financial year, must be regarded as funds derived from the Legislature's own revenue sources, and the approval of their use in subsequent financial years must be in accordance with section 22 (1) (b).

(3). Funds derived from the Legislature's own revenue sources that are approved for a particular financial year, but not spent in that year, must be approved for use in subsequent financial year in accordance with section 22 (1) (b).

The following Schedule shall be added to the Act as Schedule 1 and the current Schedule 1 shall be Schedule 2.

Code of Ethics for the Executive Authority

- (1) The object of the Code is to enhance the confidence of the public and that of 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 Legislature's Code of Ethics. It recognizes that in holding high public office for the Executive Committee has an obligation to Perform official functions and duties in a way that will bear the closest public Scrutiny, an obligation that is not discharged by simply acting within the law.
- (2) The Executive Authority must conform to the principles of good governance set out in this Schedule.
- (3) The Executive Authority must -
 - (a) fulfill all the obligations placed upon it by the Constitution, the law and the rules, regulations and policies of the Legislature;
 - (b) perform his or her duties and exercise powers with honesty and diligence, and in accordance with the highest ethical standards;
 - (c) act in all respects in a manner that is consistent with the integrity of this or her office; and
 - (d) arrange his or her private affairs in a manner that will prevent real, potential or apparent conflicts of interests from arising and, if such conflict arises, resolve the conflict in favour of the interests of the Legislature and the public.
- (4) The Executive Authority may not -
 - (a) use her or his position to enrich herself or himself or improperly benefit any other person;
 - (b) expose herself or himself to any situation involving the risk of a conflict between official responsibilities and private interests;
 - (c) receive remuneration for any work or service other than for the performance of her of his functions as Executive Authority; or
 - (d) use any allowance provided by the Legislature for a purpose other than that for which it was provided.

- (5) Any complaints concerning adherence to this Code must be determined by the Ethics Committee under the Standing Rules of the Legislature to oversee the Code of Ethics for members of the Legislature.

NORTH WEST PETITIONS BILL, 2010

To give effect to section 17 (BILL OF RIGHTS) of the Constitution; to provide for receiving petitions at the North West Provincial Legislature; to provide for the realization of the right to petition as entrenched in the Standing Rules of the North West Provincial Legislature; and to provide for matters incidental thereto,

BE IT ENACTED by the North West Provincial Legislature as follows:

Arrangement of sections

1. Definitions
2. Application
3. Objects
4. Interpretation
5. Right to Petition
6. General principles
7. Petition
8. Rights of a Petitioner
9. Submission of Petition
10. Functions of the Committee
11. Powers of Committee
12. Procedure for consideration of Petition
13. Right to appeal
14. Responsibilities of the Committee
15. Delegation

16. Sitting of the Committee
17. Accountability of the Committee to the Legislature
18. Witnesses and material of evidence
19. Offences and penalties
20. Regulations
21. Short title and commencement

DEFINITIONS

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

- (a) “**Administrative support service**” means employees of the Legislature assigned by the Secretary for purposes of the effective implementation and execution of this Act;
- (b) “**Appeal**” means an Appeal by the Petitioner contemplated in section 13 of this Act;
- (c) “**Chairperson**” means the Chairperson of the Committee responsible for petitions;
- (d) “**Committee**” means a Committee of the Legislature established in terms of section 10 of this Act;
- (e) “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- (f) “**Executive Council**” means the Executive Council of the North West Province contemplated in section 132 of the Constitution;
- (g) “**Legislature**” means the Provincial Legislature of the North West contemplated in section 104 of the Constitution;
- (h) “**Petitioner**” means a person who submits a Petition in terms of this Act and includes natural or juristic person;
- (i) “**Petition**” means complaint, request, representation or submission addressed by the Petitioner to the Committee in terms of this Act;
- (j) “**Prescribed**” means prescribed by regulations made under this Act;
- (k) “**The Secretary**” means the Secretary to the North West Provincial Legislature;
- (l) “**Speaker**” means the Speaker of the Legislature elected in terms of section 111 of the Constitution;
- (m) “**Standing Rules**” means the Rules and Orders made for the conduct of the business of the Legislature in terms of section 116 of the Constitution;
- (n) “**This Act**” includes regulations made by the Speaker under this Act.

APPLICATION

2. (1). This Act binds the North West Province and all citizens
- (2). If any conflict relating to a matter dealt with in this Act arises between this Act the provisions of any other law, other than the Constitution or an Act of Parliament expressly repealing this Act, the provisions of this Act shall prevail.

OBJECTS

3. (1). The objects of this Act are –
 - a) to enact legislation required by section 17 of the Constitution and the Standing Rules of the Legislature;
 - b) to give effect to the letter and spirit of the Constitution and the Standing Rules of the Legislature;
 - c) to promote public participation in the province;
 - d) to conduct the business of the Legislature in an open and transparent manner;
 - f) to develop an implementation of effective accountability to the Legislature's constituency;
 - g) to accelerate the culture of participatory democracy;
 - h) to establish voluntary and mandatory mechanisms and procedure to give effect to the Right of Petition in a manner which enables persons to obtain a fair hearing as simple and affordable as possible.

INTERPRETATION

4. (1). Any person applying this Act must interpret its provisions so as to give effect to –
 - a). section 17 of the Constitution, which includes the promotion of Petition through legislative and other measures designed to protect or advance persons disadvantaged by past and present unfair discrimination;
 - b). the relevant Standing Rules of the North West Provincial Legislature.
- (2). Any person interpreting this Act must take into account –
 - a). any relevant law or code of practice in terms of a law
 - b). the context of public participation and the purpose of this Act.

RIGHT TO PETION

5. Any person may submit a Petition in terms of this Act.

GENERAL PRINCIPLES

6. (1) A petitioner may submit a Petition in any of the official language as contemplated section 6 of the Constitution.

(2). The Committee must –

- a). respect, protect and promote the rights of a petitioner provided for in this Act;
- b). take appropriate steps to promote and facilitate participation by the citizens of the Province in the processes of government in the Province, particularly persons disadvantaged by unfair discrimination of whatever nature, and
- c). enhance democracy by exercising maximum accountability and transparency in consideration of Petitions.

(3). The Speaker must promote and facilitate a fair and equitable process of considering Petitions submitted to the Legislature in terms of this Act.

PETITION

7. (1). A Petition may be –

- a). a single Petition which is an individual submission from a single petitioner, concerning a particular complaint or request;
- b). an association Petition, which is an individual submission from an association or a single petitioner mandated by an association to submit that petition, concerning a particular complaint or request;
- c). collective Petition, which is made up of individual or group submissions from a number of petitioners concerning the same or substantially similar complaints or requests;
- d). a mass or group petition, which is made up of individual or group submissions from a number of petitioners concerning the same or substantially similar complaints or requests.

(2). A Petition may be submitted by a person acting –

- a). in his or her own interest;
- b). in the interest of another person who is not in a position, for whatever

- c). reason to submit a petition in his/her or its own;
as a member of or in the interest of a group or class of persons; or
- d). in the public interest.

(3). A Petition may, subject to section 6, address any matter –

- a). within the legislative authority of the North West Province contemplated in the Constitution;
- b). within the Executive Authority of the North West Province contemplated in the Constitution;
- c). assigned to a Member of the Executive in terms of the Constitution; or
- d). relating to the provincial supervision of local government contemplated in section 139 of the Constitution.

(4). The Committee must refuse to consider Petition if –

- a). it falls outside the scope of matters contemplated in section 3
- b). concerning a matter pending in a Court of Law, other tribunal or forum or a commission of enquiry contemplated in the Constitution;
- c). in connection with the conviction and sentencing of a person by the court of law to a period of imprisonment;
- d). brought by person who does not have necessary capacity to petition;
- e). written in a disparaging or insulting language against an institution of government;
- f). based on media speculations;

(5). The Committee may refuse to consider a Petition which –

- a). is libel
- b). does not state the correct name and contact details of the Petitioner and, where applicable, the name of association or group on whose behalf the Petition has been submitted;
- c). has not been signed by the Petitioner, except in the case of a Petitioner who is unable to write and –
 - (i) who has made a mark on the Petition as a symbol of his or her authority to submit the Petition, and
 - (ii) that mark was made in the presence of two witnesses who are able to write and who by signing the Petition, certified the mark as that of the Petitioner;
- d). address a matter that has been previously considered by the Committee, unless the petition embodies new information which, if considered may materially impact on the decision of the Committee;
- e). contains defamatory statements or improper language;
- f). does not supply the Legislature with full details of the complaint;
- g). the Petitioner has not exhausted all available local remedies.

RIGHTS OF A PETITIONER

8. A petitioner has the right to –
- a). submit a petition in accordance with the Act;
 - b). withdraw a petition;
 - c). submit a petition in any of the official languages of the province;
 - d). be assisted by the administrative support services in submitting a petition;
 - e). at any time before the Committee concludes its consideration of the petition –
 - (i) submit new information to the Committee in respect of the subject matter of the petition;
 - (ii) submit a written rebuttal against any statement, opinion or recommendation expressed by any person or body in respect of that petition, if invited to do so by the Committee;
 - (iii) inform the Committee if any person or body has, subsequent to the submission of the petition, addressed the matter in respect of which the petition was submitted;
 - (iv) obtain, upon request to the Committee, any information or hear any evidence or oral submission in respect of the subject matter of the petition which information or evidence must be included in the petition file;
 - f). be notified, within four weeks of the submission of the petition of –
 - (i) the number assigned to the petition file which shall also be the petition number;
 - (ii) the manner in which a petition is being dealt with, and
 - (iv) the reason why the petition is being dealt with in that manner;
 - g). have his or her petition considered by the Committee, unless the petition is subject to a disqualification as contemplated in this Act;
 - h). be given written reasons if the Committee refuses to consider a petition;
 - i). attend Committee meeting where his or her petition is considered, unless the Chairperson determines otherwise and has in writing prior to that meeting, Informed him or her of that determination and the reasons thereof;
 - j). be advised in writing of the outcome of the consideration by the Committee of the petition;
 - k). be advised by the Committee, where appropriate, of other remedies available to him or her; and
 - l). have access at any reasonable time, to the petition file.

SUBMISSION OF PETITION

- 9 (1). A petition must be submitted strictly in accordance with this Act.
- (2). The administrative support service must render all reasonable assistance, excluding financial assistance, to any person who is unable to submit a petition meeting all the requirements imposed by this Act, to enable that person to properly submit a petition.
 - (3). After careful consideration of the petition as contemplated in section 7 and the

petition does not fall within the limitations stipulated in section 7(4) and (5), the administrative service must take all necessary steps to prepare the petition for consideration by the Committee.

ESTABLISHMENT AND FUNCTIONS OF PETITIONS COMMITTEE

10. (1). The Speaker shall, after consultation with the political parties represented in the Legislature, appoint a Petitions Committee, the composition of which shall be consistent with multi-party democracy.
- (2). The Committee must -
- a). receive every petition submitted in terms of this Act;
 - b). subject to section 7(3), (4) and (5), consider every petition properly submitted in terms of this Act;
 - c). record the oral submission or evidence of a petition given in terms of section 11 (a);
 - d). if a petition has been referred to a member of the Executive Council or a Municipal Council in terms of section 11 (e),
 - (i) direct the person or body to whom the petition was referred to consider that petition, make a decision or recommendation in respect of that petition or otherwise dispose of the request or complaint raised in that petition, and
 - (ii) require the person or body to whom that petition was referred to furnish the Committee within four weeks of that referral in writing with a detailed report on the steps taken by that person or body, to address the complaint, request, recommendation or instruction by the Committee as the case may be, and the reasons for those particular steps;
 - e). if it refuses to consider a petition in terms of section 7(3), (4) and (5), or because it has not been submitted in accordance with this Act, in writing inform the Petitioner of that fact as well as reasons for its decision;
 - f). on a quarterly basis, report to the Legislature on petitions submitted to it during that period and all of its activities in respect thereof, including –
 - (i) the responsiveness, efficiency and timeousness that petitions were dealt with, and
 - (ii) the efficiency of the petitions process and procedure;
 - g). instruct the administrative support service to inform a petitioner timeously –
 - (i) about progress in respect of the consideration of a petition from time to time;
 - (ii) of any decision taken by the Committee in respect of a petition, and reasons thereof;

- (iii) if the Petitioner has been invited by the Committee to make an oral submission or call a witness;
- (iv) of the date, time and venue when the petition is to be considered and that the Petitioner may attend that sitting of the Committee;
- (v) of any referral to any person or body contemplated in this Act;
- (vi) of other remedies available to the Petitioner; and
- (vii) of the fact that the petitioner has access to the petition file at all reasonable times as contemplated in the Promotion of Access to Information Act no. 2 of 2000.

POWERS OF THE COMMITTEE

11. The Committee may –

- a). invite a Petitioner to –
 - (i) supplement his or her petition with additional oral or written submissions
 - (ii) call a witness to present oral or written evidence to the Committee
- b). make a recommendation to an appropriate person or body with a view of settling the request or complaint contained in the petition to the satisfaction of the Petitioner;
- c). make a recommendation to an appropriate person or body in respect of the general approach to be followed in future in settling a request or complaint;
- d). if requested to do so by a Petitioner, resolve a dispute or complaint, reserve an act, rectify an omission, regarding matters other than those prescribed by legislation means of negotiation;
- e). refer the petition and recommendation, if any, to a Member of Executive Council or Municipal Council for consideration and decision in respect of the complaint or request contained in the petition;
- f). make a recommendation to the Speaker to refer the petition to –
 - (i) the Legislature;
 - (ii) another Committee of the Legislature;
 - (iii) a member of the Executive Council;
 - (iv) a Municipal Council in the Province;
 - (v) and entity supporting constitutional democracy established in terms of Chapter 9 of the Constitution;
 - (vi) the National Prosecuting Authority;
- g). conclude its consideration of a petition if it resolves that no steps, or no further steps, as the case may be, may be taken to settle the matter to the satisfaction of the Petitioner;
- h). if a petition has been referred to a Member of Executive Council or Municipal Council in terms of subsection 2(e), and that person or body has failed to comply with subsection 1(d), or that person's or body's conduct or response is unsatisfactory –
 - (i) make a complaint to the Public Protector in terms of Public Protector Act

- no. 23 of 1994 or the Premier.
- (ii) take any other appropriate steps that the Committee may deem just and equitable;
- i). it the complaint or request in the petition has, since its submission, been settled to the satisfaction of the Petitioner, close the petition file;
- j). delegate any of its functions or power in terms of section 15.

PROCEDURE FOR CONSIDERATION OF A PETITION

12. The procedure for the consideration of a petition is as prescribed in the regulations and in accordance with the Standing Rules.

RIGHT OF APPEAL

13. (1). A Petitioner may appeal to the Speaker against –
- a) a refusal by the Committee to consider a petition;
 - b) where applicable, a determination by the Chairperson to consider behind closed doors a petition submitted by that Petitioner, or
 - b) any recommendation, referral to another person or body or other decision of the Committee after consideration of the petition submitted by him or her.
- (2). An appeal must be submitted and processed as prescribed;
- (3). The Speaker must consider the appeal as prescribed and may thereafter –
- a) dismiss the appeal;
 - b) table the appeal document and refer it to the Committee for re-consideration; or
 - c) refer the appeal and petition file with a recommendation to –
 - (i) the Legislature;
 - (ii) a standing committee of the Legislature;
 - (iii) the Premier or a Member of Executive Council;
 - (iv) the Municipal Council of a local government;
 - (v) an institution supporting constitutional democracy contemplated in Chapter 9 of the Constitution; or
 - (vi) the National Prosecuting Authority;
 - d) make any other determination which he or she is competent in law to make in respect of the petition.
- (4). The Speaker must within a reasonable time after the consideration of an appeal, in writing, report to the Legislature on that appeal.

RESPONSIBILITIES OF COMMITTEE

14. The Committee must, from time to time, take reasonable steps to –
- a) inform the citizens of the Province of their rights in terms of this Act;
 - b) inform the citizens of the Province of the physical address, fax number or postal address where a petition may be submitted;
 - c) ensure that persons or categories of persons previously disadvantaged by unfair discrimination enjoy full participation in the process of governance;
 - d) exercise maximum accountability and transparency in the consideration of petitions where appropriate, or if requested to do so by a petitioner, resolve a dispute by means of mediation or negotiation.

DELEGATION

15. (1) The Committee may delegate any of its duties, functions or powers in respect of a particular petition to a Member of the Committee.
- (2) A Member contemplated in subsection (1) shall be appointed by the Chairperson;
- (3) The Chairperson must provide the Members with a written and signed authorization to consider a particular petition.
- (4) The Chairperson may at any time before the Member has commenced his or her Consideration of a petition, withdraw his or her consideration of that petition to the Committee.
- (5) The Member must after he or she has concluded his or her consideration of that Petition, refer it to the Committee.
- (6) A Member appointed in terms of this section, has all powers that are necessary to Enable him or her to fulfill his/her functions.
- (7) Notwithstanding the provisions above, the Committee may exercise any power or Perform any duty delegated in terms of this section.

SITTING OF COMMITTEE

16. (1). The Committee may for purpose of hearing evidence and considering a petition, sit at a date, time and place anywhere in the Province determined by the Chairperson.
- (2). The Chairperson must give public notice of sitting in accordance with the Standing Rules of the Legislature.
- (3). The Chairperson must instruct the administrative support service to timeously –
- a) ensure that subpoenas have been properly issued and served as prescribed;
 - b) inform the Petitioner in writing on any matter that the Petitioner is entitled to be informed of in terms of this Act, any other law or Standing Rules of the Legislature;
 - c) if necessary, ensure that the contents of the petition file are translated into

- d) a working language of the Committee;
perform any additional duty, which enable the Committee to properly consider a petition and exercise its other functions in terms of this Act.
- (4). Evidence presented before the Committee must be heard in public, unless it is –
- a) in the interest of justice, or
 - b) in the interest of the safety of the Petitioner or a witness;
that evidence must be heard behind closed doors.
- (5). The administrative support service must provide the Chairperson with a list of submitted petitions, which have not been finalized by the Committee for tabling at each meeting of the Committee.

ACCOUNTABILITY OF COMMITTEE TO THE LEGISLATURE

- 17.(1). The Committee must report to the Legislature as contemplated in section 12(1)(f).
- (2). A debate on an issue raised in a report of the Committee to the Legislature must take place if more three members of the Legislature so demand.
 - (3). The Legislature may refer any matter contained in a report submitted to the Legislature by the Committee back to the Committee for reconsideration.
 - (4). A member of the Legislature has access to a petition file at any reasonable time.
 - (5). The Legislature may whilst the Committee is considering a petition, only conduct an interpellation in respect of that petition, relating to the process of considering petition, and not in respect of the merits thereof.

WITNESSES AND MATERIAL OF EVIDENCE

- 18.(1). For the purpose of ascertaining a matter relating to the subject of its investigation, the Committee may either –
- a) summon a person to attend a sitting of the Committee as a witness in order to give evidence if the Committee requires it, or
 - b) subpoena a person to attend a sitting of the Committee as a witness in order to give evidence, or produce any book, document, object or other material of evidence, before the Committee at the place and time specified in the subpoena.
- (2). A subpoena contemplated in subsection 1(ii) must –
- a) be signed and issued by the Chairperson;
 - b) state the matter in respect of which it is issued;
 - c) stipulate the date, time and place where the person or a representative of the body must appear before the Committee;
 - c) draw the attention of the person to whom the subpoena is addressed to the provisions of subsection (4);

- d) be timeously served on the person to whom the subpoena is addressed by-
 - (i) registered mail;
 - (ii) personal delivery.
- (3). A person appearing before the Committee to give oral evidence must, before giving evidence, take oath or make affirmation administered by the Chairperson or any other person authorized by him or her to do so, to only speak the truth.
- (4). Any witness, other than an employee of the Province or a Municipal Council, appearing before the Committee to give oral evidence or to produce any document, object or other material of evidence under subpoena issued in terms of subsection (1), is entitled to the witness fee payable to a witness giving evidence, as contained in the Standing Rules.
- (5). A person appearing before the Committee to give oral evidence may be assisted by a representative or his or her choice.

OFFENCES AND PENALTIES

- 19.(1). A person properly subpoenaed in terms of section 18(1)(b), who without just cause –
 - a) fails to appear before the Committee at the date and place stipulated in the subpoena;
 - b) fails to remain in attendance at the sitting of the Committee until the Chairperson excuses him or her from further attendance;
 - c) refuses or fails to take an oath or make an affirmation contemplated in section 18(3) when called upon by the Chairperson to do so;
 - d) refuses or fail to produce any book, document, object or other material of evidence in his or her possession or under his or her control, which he or she has been instructed to produce; is guilty of an offence.
- (2). A person properly subpoenaed in terms of section 18(1)(b), who after having taken an oath or made an affirmation-
 - a) fails to answer fully or dutifully any question lawfully put to him or her, or
 - b) otherwise knowingly gives false evidence before the Committee, is guilty of an offence.
- (3). A person –
 - a) who threatens, obstructs or unduly influence a person properly subpoenaed in terms of section 18(1)(b) to-
 - (i) refuse or fail to give oral evidence before the Committee;
 - (ii) knowingly give false evidence before the Committee, or
 - (iii) refuse or fail to produce any book, document, object or other material of evidence in his or her possession or under his or her control, which he or she has been instructed to produce;
 - b). properly subpoenaed in terms of section 18(1)(b), produces any book, document, object or other material of evidence before the Committee, which he or she knows is false, fabricated, falsified or unlawfully or falsely altered;

- c) who destroys, conceal, falsifies, fabricates, or unlawfully or falsely alters any book, document, object or other material or evidence which he or she knows or may be reasonably expected to know it may be relevant to a petition being considered or to be considered by the Committee;
- d) who knowingly furnishes the Committee with information or makes a statement before it, which is false or misleading;
- e) who obstructs or unduly influences the Committee, any Member of the Committee or any member of the administrative support service from doing or not doing anything authorized in terms of this Ac; is guilty of an offence.

(4). Any person found guilty of an offence under this section shall be liable to a fine or imprisonment not exceeding twelve months or to both such fine and imprisonment.

REGULATIONS

20.(1).Speaker must make regulations in respect of –

- a) the process and procedures for the submission of a petition;
- b) the registration of a petition and opening of a petition file by the administrative support service;
- c) the preliminary investigation of a petition by the administrative support service;
- d) the process and procedures for the submission of an appeal by a Petitioner;
- e) the process and procedures for handling of a petition when the Legislature is not in session; and
- f) the procedure to deal with conflicts of interests

(2).The Speaker may make regulations in respect of –

- a) the rights of a petitioner contemplated in this Act;
- b) any duty or function not in subsection (1), which the Committee is required to perform;
- c) any duty or function not provided for in subsection (1), which the administrative support service is required to perform;
- d) any time frames to be adhered to during any process or for any procedure contemplated in this Act;
- e) the archiving or disposal of a petition file that has been closed;
- f) the procedures and process for the issuing and serving of subpoenas for purposes of this Act;
- g) any measures to be taken by the Legislature, the Committee or the Secretary to promote and facilitate participation by the citizens of the Province in the processes of government in the Province, or

- h) in general, any matter not provided for in this section, that may be necessary to prescribe in order to achieve or promote the objects of this Act.

SHORT TITLE AND COMMENCEMENT

21. This Act shall be called North West Petitions Act, 2010 and shall come into operation upon publication in the *Government Gazette*.

NORTH WEST PROVINCIAL GOVERNMENT

**NORTH WEST PROVINCE POLITICAL PARTY FUND BILL,
2010**

(As introduced in the North West Provincial Legislature)
(The English text is the original text of the Bill)

(Speaker of the North West Provincial Legislature))

[– 2010]

BILL

To provide funding for political parties participating in the North West Provincial Legislature; to establish the North West Political Party Fund; to provide for accountability regarding that Fund; to provide for regulation of disclosure by political parties; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Constitution establishes the basic principle of multi-party democracy;
AND WHEREAS the Constitution promotes this principle in all spheres of government;
AND WHEREAS section 236 of the Constitution promotes this principle and, in particular, requires national legislation to provide for the funding of political parties participating in national and Provincial Legislatures on an equitable and proportional basis, to enhance multi-party democracy;

AND WHEREAS national legislation has been enacted providing for funding of political parties participating in national and Provincial Legislatures, and establishing a fund for the purpose of funding political parties that participate in national and Provincial Legislatures;

AND WHEREAS supplementary funding of political parties participating in the North West Provincial Legislature on an equitable and proportional basis further enhances multi-party democracy;

AND WHEREAS the money so allocated is to be utilised by political parties for purposes arising from their functioning as political parties in a modern democracy;

BE IT ENACTED by the Provincial Legislature of the North West Province as follows:-

Definitions

1. In this Act, except if not consistent with the context-

"financial year" means a period of twelve months from 1 April in every year to 31 March the following year, both days included;

"Fund" means the North West Province political Party Fund established by section 3(1)

"Secretary" means the Secretary to the North West Provincial Legislature appointed in terms of North West Provincial Legislature Management Act, 3 of 2007.

"Legislature" means the provincial Legislature of the North West Province;

"prescribe" means prescribed by regulation made under this Act; and

"this Act" Includes the regulations made under this Act herein.

2. Object

(1) The object of this Act is to-

- (a) to provide to public funding for political parties represented in the Legislature;
- (b) Minimise dependency of political parties on private funding; and
- (c) Encourage political parties to disclose their sources of private funding.

3. Establishment of the North West Province Political Party Fund

(1) The Fund is hereby established to manage public funding for political parties Represented in the Legislature.

(2) The fund must be credited with-

- (a) money appropriated to the Fund by the Legislature;
- (b) contributions and donations to the Fund originating from sources within or outside the Republic;

- (c) interest earned on money deposited in terms of section 4 (1) and on money invested in terms of section 4 (2); and
- (d) money recovered or accruing to the Fund from any other source.

4. Deposit and investment of money of Fund

- (1) Except as provided in subsection 2, money standing to the credit of the Fund must be deposited by the Secretary of the North West Provincial Legislature in a separate bank account held with a registered bank in the Republic.
- (2) Monies held in the Fund not required immediately for allocations to political parties in terms of section 6, may be invested accordingly.

5. Management and control of the Fund

- (1) The Secretary of the North West Provincial Legislature is responsible for the management and administration of the Fund and is the accounting officer of the Fund.
- (2) For each financial year the Secretary of the North West Provincial Legislature must keep records in accordance with generally accepted accounting practice and procedures of-
 - (a) money received by or accruing to the Fund;
 - (b) allocations and payments made there-from;
 - (c) expenditure arising from the allocation of money from the Fund; and
 - (d) a record of the capital and liabilities of the Fund during that year.
- (3) The first financial year of the Fund must run from the day on which this Act comes into operation until 31 March of the following year, and, for each subsequent financial year it will run from 01 April of each year to 31 March of the following year.

6. Allocations from the Fund

- (1) Every political party represented in the Legislature is entitled to the allocation from the Fund.
- (2) Subject to subsection 7, money allocated to a party must be used for purposes compatible with its functioning in a modern democracy.
- (3) The functioning of a political party as contemplated in subsection 2 includes, but is not limited to-
 - (a) the development of the political will of the people;
 - (b) bringing the influence of a political party to bear on the shaping of public opinion;
 - (c) agitating and furthering political education;
 - (d) promoting active participation by individual citizens in politics;
 - (e) exercising an influence on political trends; and
 - (f) ensuring continuous vital links between the people and organs of state, in particular the Legislature.
- (4) Allocations from the Fund to political parties must be determined and made at the prescribed intervals, with prescribed installments, and in the prescribed manner .
- (5) The Secretary of the North West Provincial Legislature must make allocations from the Fund to the political parties in accordance with a prescribed formula based-
 - (a) on the principle of proportionality, taking into account each political party's representation in the Legislature; and
 - (b) on the principle of equity, taking into account amongst others, a fixed threshold for a minimum allocation and a weighted scale of representation for an allocation to each of the political parties represented in the Legislature.
- (6) The information and particulars necessary to apply the prescribed formula to a party must be ascertained from the relevant facts and circumstances as when the allocation is to be made.
- (7) Money allocated to a political party from the Fund may not be used-
 - (a) directly or indirectly paying remuneration, fee, reward, prerequisite or other benefit to a person representing the party in the Provincial Legislature or holds and office under state;
 - (b) with a view to finance or contribute to a matter, cause, event occasion, whether directly or indirectly, in contravention of the code of ethics binding on the members of Provincial Legislature, as the case maybe,
 - (c) directly or indirectly for the purpose of establishing or financing a business, acquiring or maintaining a right or any financial interest whatsoever in a business;
 - (d) to acquire a right or interest in the immovable property, except where the right or interest in the immovable property is to be used by the political party solely for its ordinary political purposes; or
 - (e) for any other purpose that is inconsistent with the functioning of a political party in a modern democracy as may be prescribed.
- (8) (a) The allocation of money from the Fund to a political party must come to an end when the party ceases to qualify in terms of subsection (1); and

- (b) within 21 days after the date on which a political party ceases to qualify, it must repay to the fund the unspent balance of all monies allocated to it.

7. Accountability of political parties for money allocated from the Fund

- (1) A political party to which money is allocated from the Fund must-
 - (a) keep a separate bank account into which the money must be deposited with a registered bank in the Republic; and
 - (b) appoint an official of that political party as its accounting officer with regard to the money allocated to the party from the Fund.
- (2) The responsibility of the accounting officer of the political party is to account for the money allocated to that political party and includes amongst others, to-
 - (a) ensure that the party complies with the requirements of this Act; and
 - (b) ensure that allocated money is not paid out for a purpose not authorised by this Act.
- (3) The accounting officer of the political party must keep separate books and records of account in the prescribed manner with regard to money allocated from the Fund and all transactions thereon.
- (4) Within two months after the end of a financial year the accounting officer must prepare a statement-
 - (a) showing all amounts received by the political party from the Fund during that financial year and the usage thereof; and
 - (b) describing the purposes for which the various amounts have been used
- (5) The books and records of account contemplated in subsection 3 and the statement contemplated in subsection 4 must be audited by a public accountant and auditor registered and practicing as such in terms of the public Accountants and Auditors Act, 1991 (Act No. 80 of 1991).
- (6) An auditor who performs an audit contemplated in subsection 6 must in the auditor's report express an opinion as to whether the allocated money was spent for purposes authorized by this Act.
- (7) Within three months after the end of each financial year the accounting officer shall submit the audited financial statements and report of the auditor to the Secretary of the North West Provincial Legislature.
- (8)
 - (a) Subject to paragraph (b), the Secretary of the North West Provincial Legislature -
 - (i) in consultation with the Speaker, order that the allocation money to political party from the Fund be suspended on reasonable grounds that the party failed to comply with a requirement of this Act; and

- (ii) in consultation with the Speaker, terminate the suspension if satisfied, in light of the party's subsequent conduct, that the suspension is no longer justified;
- (b) the suspension of a political party's allocations may be ordered in terms of paragraph (a) only if the Secretary of the North West Provincial Legislature has-
 - (i) by written notice informed the party of the intended suspension and the reasons thereof; and
 - (ii) called on the party to furnish reasons within the period specified in the notice why its allocations from the Fund should not be suspended.
- (c) the period referred to in paragraph (b) must not be shorter than 30 days as from the date of the notice.

8. Recovery of money irregularly spent by political parties

- (1) Where money allocated to a political party in terms of section 6 has not been spent in accordance with a requirement of this Act, the political party concerned is liable to repay to the Secretary of the North West Provincial Legislature the money irregularly spent.
- (2) The Secretary of the North West Provincial Legislature must recover the money irregularly spent and may do so by -
 - (a) setting off the amount irregularly spent against an allocation that may become payable to the political party; or
 - (b) instituting a civil claim in respect of the amount irregularly spent against the political party concerned.

9. Speaker to report to the North West Provincial Legislature on Fund

- (1) As soon as possible after the end of each financial year, the Speaker must-
 - (a) table in the Legislature a report regarding management and administration of the Fund during that financial year;
- (2) Within 30 days after receipt of the Auditor-General's report, the Speaker must submit the report to Provincial Legislature together with the audited financial statements of the Fund and the audited Speaker's report.

10. Surplus money at the end of financial year

- (1) Money not spent by a political party at the end of a financial year must be shown in the books and records of account of the party as a credit balance carried forward to the next financial year: Provided that-
 - (a) money carried forward may be limited to an amount representing a prescribed percentage of the allocations made for that financial year; and
 - (b) money carried forward to the next financial year shall not be taken into account in determining an allocation to the party concerned during that financial year.

- (2) Money standing to the credit of the Fund at the end of a financial year must be carried forward to the next financial year as a credit balance.

- (3) If the North West Provincial Legislature is dissolved in terms of the Constitution, a political party that is represented in the legislative must close its books and records of account-
 - (a) not later than 21 days before the date set for the election and within 14 days thereafter submit an audited statement in respect of those books and records of account to the Fund Manager; and
 - (b) not later than the day immediately before the date set for the election, such a political party must repay to the Fund Manager the unspent balances as at the date when its books and records of account are closed as contemplated in paragraph (a).

- (4) If North West Provincial Legislature the is dissolved in any other circumstances, a political party represented therein must close its books and records of account-
 - (a) not later than 21 days before the date set for the election;
 - (b) within 14 days thereafter submit an audited statement in respect of those books and records of account to the Secretary of the North West Provincial Legislature;
 - (c) the Secretary of the North West Provincial Legislature must calculate the representation of a political party mentioned in subsection 4 as a percentage of the representation of that party contemplated in subsection 3; and
 - (d) not later than the day immediately before the date set for the election, such a political party must repay to the Fund the unspent balance of the determined percentage as at the date when the books and records of account are closed as contemplated in paragraph (a).

11. Regulations

- (1) The Speaker, acting on the recommendation of the Rules Committee of the Legislature may by Proclamation, make regulations consistent with this Act-
 - (a) to prescribe-
 - (i) the procedure according to which,
 - (ii) manner in which, and
 - (iii) intervals or installments at which payments from the Fund are to be determined and made;
 - (b) to prescribe the formula on which allocations are to be calculated;
 - (c) to determine a purpose which in terms of section 6(2) is not compatible with the functioning of a political party in a modern democracy;
 - (d) to prescribe the information and particulars that political parties must furnish to the Secretary of the North West Provincial Legislature with a view to ensure proper and effective application and administration of and compliance with this Act;
 - (e) to prescribe a framework for disclosure by a political party represented in the Legislature for funding received elsewhere by the party concerned; and
 - (f) on any other matter incidental thereto.

12. Short title and commencement

- (1) This Act is called the North West Province Political Party Fund Act, 2010, and comes into operation on assent by the Premier.
 - (2) Different provisions of this Act may be brought into operation on different dates.
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