

REPUBLIC OF SOUTH AFRICA

FINANCE BILL

(As introduced in the National Assembly (proposed section 77))
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 21—2016]

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[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

To approve unauthorised expenditure; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

1. In this Act, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), must bear the meaning so assigned.

2. (1) The unauthorised expenditure referred to in Schedule 1 to this Act in the amount of R1 509 825 368.04, and described in the reports of the Committee on Public Accounts of the National Assembly identified in the second column of that Schedule, is authorised as a direct charge against the National Revenue Fund in terms of section 34(1)(a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(2) The unauthorised expenditure referred to in Schedule 2 to this Act in the amount of R1 398 676 990.92, and described in the reports of the Committee on Public Accounts of the National Assembly identified in the second column of that Schedule, is authorised and previously surrendered funds are reallocated to the votes in terms of section 34(1)(b) of the Public Finance Management Act, 1999.

3. This Act does not detract from or limit any power or duty to take appropriate steps to recover unauthorised expenditure from a responsible official or former official. 20

4. This Act is called the Finance Act, 2016.

SCHEDULE 1: Unauthorised expenditure referred to in section 34(1)(a) of the Public Finance Management Act, 1999: An additional amount is appropriated as a direct charge against the National Revenue Fund to cover the overspending of the vote appropriation

Amount Unauthorised (R) Column 1	Committee on Public Accounts Report Reference Column 2	Financial Year Column 3	Vote Title Column 4
53,002,000.00	COPA 2016 1st report	2005/06	Home Affairs
687,304,271.57	1st report	2010/11	Home Affairs
160,394,000.00	1st report	2012/13	Home Affairs
345,804,818.56	3th report	2008/09	Transport
263,320,277.91	3th report	2009/10	Transport
1,509,825,368.04			

SCHEDULE 2: Unauthorised expenditure referred to in section 34(1)(b) of the Public Finance Management Act, 1999: Funds surrendered by the vote in respect of the listed unauthorised expenditure will be refunded, as a direct charge against the National Revenue Fund in favour of the vote

Amount Unauthorised (R) Column 1	Committee on Public Accounts Report Reference Column 2	Financial Year Column 3	Vote Title Column 4
46,881,000.00	COPA 2015 1st report	2005/06	Home Affairs
140,640,282.92	1st report	2012/13	Home Affairs
3,782,000.00	2nd report	2005/06	Water and Sanitation
844,979,607.76	3th report	2008/09	Transport
362,394,100.24	3th report	2009/10	Transport
1,398,676,990.92			

MEMORANDUM ON THE OBJECTS OF THE FINANCE BILL, 2016

1. BACKGROUND TO BILL

The Bill provides for the authorisation of national government unauthorised expenditure as a direct charge against the National Revenue Fund. The expenditure arises from the 2005/06, 2008/09, 2009/10, 2010/11 and 2012/13 financial years. Fifty two per cent of the funds represent an additional amount to be allocated to votes. Unauthorised expenditure was incurred by the Departments of Home Affairs, Transport and Water Affairs in different years.

2. OBJECTS OF BILL

- 2.1 The Bill is aimed at implementing the recommendations recorded in the first, second and third reports of the National Assembly's Committee on Public Accounts, dated 9 February 2016, that Parliament authorise the unauthorised expenditure and approve a funding mechanism. The recommendations were adopted by the National Assembly on 25 February 2016.
- 2.2 The Bill follows the procedure for the authorisation of unauthorised expenditure as outlined in section 34(1)(a) and (b) of the Public Finance Management Act, 1999 (Act No.1 of 1999) ("the PFMA"). In terms of section 34(1) of the PFMA, an unauthorised expenditure does not become a charge against a Revenue Fund except when—
 - (a) the expenditure is an overspending of a vote and Parliament or a provincial legislature, as may be appropriate, approves, as a direct charge against the relevant Revenue Fund, an additional amount for that vote which covers the overspending; or
 - (b) the expenditure is unauthorised for another reason and Parliament or a provincial legislature, as may be appropriate, authorises the expenditure as a direct charge against the relevant Revenue Fund.
- 2.3 Section 213(2) of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), provides that money may be withdrawn from the National Revenue Fund only (i) in terms of an appropriation in terms of an Act of Parliament; or (ii) as a direct charge against that Fund, when it is provided for in the Constitution or an Act of Parliament. In accordance with this, the Bill provides for the approval and authorisation of unauthorised expenditure as a direct charge against the National Revenue Fund. Expenditure was incurred due to the overspending of vote appropriations, overspending of a main division (*programme*) within a vote and due to expenditure not in accordance with the purpose of a main division for which the funds had been earmarked. Only the authorisation of the overspending of vote appropriations represents an additional amount of funding to be allocated to votes.

3. SUMMARY OF BILL

- 3.1 The Bill provides for the authorisation of unauthorised expenditure in the amount of R2 908 502 358.96, as follows:
 - 3.1.1 The total amount of R1 509 825 368.04 referred to in Schedule 1 to the Bill, is classified as unauthorised expenditure in terms of section 34(1)(a) of the PFMA due to the overspending of votes. It comprises overspending of:
 - (a) Home Affairs (R53 002 000.00, R687 304 271.57 and R160 394 000.00) during the 2005/06, 2010/11 and 2012/13 financial years respectively; and
 - (b) Transport (R345 804 818.56 and R263 320 277.91) during the 2008/09 and 2009/10 financial years respectively.
 - 3.1.1.1 The overspending of the Home Affairs vote by R53 002 000.00 during the 2005/06 financial year was mainly due to expenditure for the implementation of the Back Record Conversion

project, for the digitisation of manual fingerprints as well as the payment of outstanding claims from the 2004/05 financial year for expenditure at foreign missions. The overspending by R687 304 271.57 during the 2010/11 financial year was due to increased printing costs for passports; the overhaul of the Home Affairs National Information System; the payment of previous financial years' outstanding claims from the Department of International Relations and Cooperation for expenditure at foreign missions; the payment of consultancy services, information services, security services, legal fees and leases for office accommodation. The overspending by R160 394 000.00 during the 2012/13 financial year was due to costs related to the modernisation of information and system's equipment, and the supply of official enabling documents that were not initially provided for in the Department's budget.

3.1.1.2 The overspending of the Transport vote by R345 804 818.56 and R263 320 277.91 during the 2008/09 and 2009/10 financial years respectively, was due to the overspending of the budget baseline allocation for bus subsidies on Programme 6: Public Transport.

3.1.1.3 The respective amounts listed in Schedule 1 to the Bill will become a direct charge against the National Revenue Fund for the 2016/17 financial year when allocated to the votes.

3.1.2 The expenditure of R1 398 676 990.92 referred to in Schedule 2 to the Bill is, in terms of section 34(1)(b) of the PFMA, unauthorised expenditure for another reason. It comprises of:

3.1.2.1 Expenditure not in accordance with the purpose of the main division (*programme*) of the Water Affairs vote (R3 782 000.00), during the 2005/06 financial year, and the Home Affairs vote (R46 881 000.00 and R140 640 282.92), during the 2005/06 and 2012/13 financial years respectively:

3.1.2.1.1 The Water Affairs vote utilised R3 782 000.00 earmarked for capital projects to cover expenditure on research study, goods and services and regional service council levies.

3.1.2.1.2 The Home Affairs vote utilised for other purposes R46 881 000.00 exclusively earmarked for information technology capital projects during the 2005/06 financial year and R140 640 282.92 exclusively earmarked for the Information Systems Modernisation Project (Who Am I Online) during the 2012/13 financial year.

3.1.2.2 Overspending of a main division (*programme*) of the vote of Transport (R844 979 607.76 and R362 394 100.24), during the 2008/09 and 2009/10 financial years respectively, due to the overspending of the budget baseline allocation for bus subsidies on Programme 6: Public Transport.

3.1.3 The respective amounts listed in Schedule 2 to the Bill, if previously surrendered by the votes to the National Revenue Fund, will be refunded to the votes, as a direct charge against the National Revenue Fund. The unauthorised expenditure accounts will then be cleared of these amounts. Following the 2014 National Macro Organisation of the State, the vote of Water Affairs ceased to exist during the 2014/15 financial year and the unauthorised expenditure became a liability of the new Water and Sanitation vote. Any funds surrendered by the

Water Affairs vote in respect of the unauthorised expenditure listed in Schedule 2 will therefore be refunded to the Water and Sanitation vote.

4. SUMMARY OF STRUCTURE OF BILL

- 4.1 **Clause 1** provides for the interpretation of certain words and expressions in the Bill.
- 4.2 **Clause 2** provides for the approval of unauthorised expenditure that is set out in Schedules 1 and 2 to the Bill.
- 4.3 **Clause 3** deals with the recovery of unauthorised expenditure, and stipulates that the Bill does not detract from or limit any power or duty to take appropriate steps to recover unauthorised expenditure from a responsible official or former official.
- 4.4 **Clause 4** contains the short title.
- 4.5 **Schedules 1 and 2** set out the affected votes and descriptions for the authorisation of unauthorised expenditure.

5. ORGANISATIONS AND INSTITUTIONS CONSULTED

All departments that incurred unauthorised expenditure reflected in Schedule 1 and 2 to the Bill participated in the hearings of the Committee on Public Accounts of the National Assembly.

6. FINANCIAL IMPLICATIONS FOR THE STATE

The Bill proposes a direct charge against the National Revenue Fund in the amount of R1 509 825 368.04 as an additional amount to be allocated to votes that previously overspent their annual appropriations.

7. CONSTITUTIONAL IMPLICATIONS

The Bill accords with section 213(2)(b) of the Constitution, which stipulates that money may be withdrawn from the National Revenue Fund as a direct charge against that Fund when it is provided for in the Constitution or an Act of Parliament.

8. PARLIAMENTARY PROCEDURE

- 8.1 The State Law Advisers (“SLA”) are of the view that the Bill is a money Bill as envisaged in section 77(1)(d) read with section 77(2)(d) and must comply with the procedure provided for money Bills as contemplated for in section 77(3) of the Constitution. Section 77 of the Constitution that deals with money Bills provides as follows:

“Money Bills

77. (1) A Bill is a money Bill if it—

- (a) appropriates money;
- (b) imposes national taxes, levies, duties or surcharges;
- (c) abolishes or reduces, or grants exemptions from, any national taxes, levies, duties or surcharges; or
- (d) authorises direct charges against the National Revenue Fund, except a Bill envisaged in section 214 authorising direct charges.

(2) A money Bill may not deal with any other matter except—

- (a) a subordinate matter incidental to the appropriation of money;
- (b) the imposition, abolition or reduction of national taxes, levies, duties or surcharges;

- (c) the granting of exemption from national taxes, levies, duties or surcharges; or
- (d) the authorisation of direct charges against the National Revenue Fund.

(3) All money Bills must be considered in accordance with the procedure established by section 75. An Act of Parliament must provide for a procedure to amend money Bills before Parliament.”
(Our emphasis.)

- 8.2 The SLA are of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or the customs of traditional communities.

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