REPUBLIC OF SOUTH AFRICA

TREASURY CONTROL BILL

(As introduced in the National Assembly)

(MINISTER OF FINANCE)

[B 119—98]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP TESOURIEBEHEER

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN FINANSIES)

[W 119—98]

ISBN 0 621 28509 9

No. of copies printed 2 600

BILL

To regulate financial management in the national and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in those governments ; and to provide for matters connected therewith.

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

ARRANGEMENT OF SECTIONS

SCHEDULE

CHAPTER 1

INTERPRETATION, OBJECT, APPLICATION AND AMENDMENT OF THIS ACT

Definitions

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

"accounting officer" means a person mentioned in section 32;

"Accounting Standards Board" means the board established in terms of section 53;

"constitutional institution" means—

(a) the Public Protector;
(b) the Human Rights Commission;
(c) the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
(d) the Commission for Gender Equality;
(e) the Auditor-General;
(f) the Electoral Commission;
(g) the Independent Broadcasting Authority;
(h) the Financial and Fiscal Commission;
(i) the South African Reserve Bank;
(j) the Commission on the Remuneration of Persons Holding Public Office;
(k) the Pan South African Language Board; and
(l) the Municipal Demarcation Board;

"executive authority" —

(a) in relation to a national government institution, means the Cabinet member who is accountable to Parliament for that institution; and

(b) in relation to a provincial government institution, means the member of the Executive Council of a province who is accountable to the provincial legislature for that institution;

"financial year" means the period commencing on 1 April in a year and ending 31 March in the next year, except when an institution has a different financial year in terms of legislation and the National Treasury has approved that financial year;

"generally recognised accounting practice" means an accounting practice complying with standards issued by the Accounting Standards Board;

"government business enterprise" means a statutory body which —

(a) is a juristic person;

(b) has been assigned financial and operational authority to carry on a business activity;

(c) which as its principal business provides goods or services to persons other than government; and

(d) is financed fully or partially from own sources;

"MEC for finance" means the member of an Executive Council of a province who is responsible for finance in the province;

"Minister" means the Minister of Finance;

"national department" means a department, administration or office listed in Schedule 1 or 2 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), but excluding a provincial administration;

"national government institution" means—

(a) a national department; or

(b) a board, commission, company, corporation, fund or other entity under the ownership control of the national executive;

"National Treasury" means the National Treasury established by section 5;

"overspending", in relation to a vote, means when expenditure under a vote exceeds the amount appropriated for that vote;

"ownership control", in relation to an entity, means the ability to exercise any of the following powers to govern the financial and operating policies of the entity in order to obtain benefits from its activities:

(a) to appoint or remove at least the majority of the board of directors or equivalent governing body;

(b) to cast at least the majority of the votes at meetings of the board of directors or equivalent governing body; or

(c) to control at least the majority of the voting rights at a general meeting**;**

"prescribe" means prescribe by regulation or instruction in terms of section 52;

"provincial department" means —

(a) a provincial administration listed in Schedule 1 of the Public Service Act, 1994; or

(b) a department within a provincial administration;

"provincial government institution" means—

(a) a provincial department;

(b) a board, commission, company, corporation, fund or other entity under the ownership control of a provincial executive; or

(c) any entity established in terms of a provincial constitution;

''provincial treasury'' means a treasury established in terms of section 16;

"Revenue Fund" means—

(a) the National Revenue Fund mentioned in section 213 of the Constitution; or

(b) a Provincial Revenue Fund mentioned in section 226 of the Constitution;

"this Act" includes any regulations and instructions in terms of section 43, 52, 53 or 55;

"trading entity" means an entity established by a national or provincial department within its administration for the provision or sale of goods or services, with the approval of—

(a) in the case of a national department, the National Treasury; or

(b) in the case of a provincial department, the relevant provincial treasury acting within a prescribed framework;

"treasury" means the National Treasury or a provincial treasury;

"unauthorised expenditure" means—

(a) overspending of a vote or of a limit determined in a vote;

(b) expenditure not in accordance with the purpose of a vote;

(c) expenditure not in compliance with legislation; or

(d) any loss resulting from criminal conduct;

"vote" means a vote in a national or provincial budget under which money is appropriated and on which Parliament or a provincial legislature votes.

Object of this Act

2. The object of this Act is to secure transparency**,** accountability, and sound management of the revenue, expenditure, assets and liabilities of the institutions to which this Act applies.

Application of this Act

3. (1) This Act, to the extent indicated, applies to—

(a) national and provincial government institutions;
(b) Parliament and the provincial legislatures; and
(c) constitutional institutions.

(2) In the event of any inconsistency between this Act and any other legislation, this Act prevails.

Amendments to this Act

4. Draft legislation directly or indirectly amending this Act may be introduced in Parliament —

(a) by the Minister only; or
(b) only after the Minister has been consulted on the contents of the proposed amendment.

CHAPTER 2

NATIONAL GOVERNMENT

Part l: National Treasury

Establishment

5. (1) A National Treasury is hereby established, consisting of —

(a) the Minister, who is the head of the Treasury; and
(b) the national department or departments responsible for financial and fiscal matters.

(2) The Minister, as the head of the National Treasury takes the policy decisions of the Treasury and all other decisions not delegated by the Minister in terms of section 7.

Functions and powers

6. (1) The National Treasury must—

(a) develop, co-ordinate and implement the fiscal policy framework and co-ordinate macro-economic policy ;
(b) co-ordinate intergovernmental financial and fiscal relations;
(c) manage the budget preparation process;
(d) exercise control over the implementation of the national budget;
(e) monitor the implementation of provincial budgets; and
(f) promote and enforce transparency in and effective management of revenue, expenditure, assets and liabilities of the institutions to which this Act applies.

(2) To the extent necessary to perform its functions, the National Treasury may—

(a) prescribe uniform treasury norms and standards;
(b) prescribe a framework for an appropriate procurement and provisioning system;
(c) enforce these norms and standards in national government institutions;
(d) monitor and assess the implementation of these norms and standards in provincial government institutions;

(e) assist national and provincial government institutions in building their capacity for efficient, effective and transparent financial management;

(f) investigate any system of financial management and internal control in a national or provincial government institution;

(g) intervene by taking appropriate steps, including the withholding of funds in terms of section 216(2) of the Constitution, to address a serious or persistent material breach of this Act by a national or provincial government institution; and

(h) do anything further that is necessary to fulfil its responsibilities effectively.

Assignment of powers and duties to officials of National Treasury.

7. (1) The Minister may delegate any of the National Treasury's powers in terms of this Act to the head of a department forming part of the National Treasury, or instruct that official to perform any of the Treasury's duties.

A delegation or instruction in terms of subsection (1) —

(a) is subject to any limitations or conditions that the Minister may impose;

(b) may include the power to sub-delegate; and

(c) does not divest the Minister of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Minister may confirm, vary or revoke any decision taken by an official in consequence of a delegation or instruction, subject to any rights that may have become vested.

Cash management and banking arrangements

8. (1) The National Treasury may prescribe a framework within which institutions to which this Act applies may conduct their banking arrangements.

(2) An institution which is allowed to open a bank account in terms of the prescribed framework may only do so with a bank registered in South Africa and approved in writing by the National Treasury after any prescribed tendering procedures have been complied with.

(3) When the National Treasury considers it necessary, it may approve in writing the opening of a bank account abroad or with a foreign bank.

(4) A bank which has opened a bank account for an institution to which this Act applies must disclose information regarding the account when so requested by the Treasury.

(5) The National Treasury may prescribe a framework for appropriate and effective cash and debt management systems and any investment policy for institutions to which this Act applies.

(6) This section does not apply to the South African Reserve Bank.

Annual consolidated financial statements

9. (1) The National Treasury must —

(a) prepare consolidated financial statements in accordance with generally recognized accounting practice for each financial year reflecting the financial position, operations and cash flows of national government institutions, Parliament and constitutional institutions; and

(b) submit those statements for audit to the Auditor-General within three months after the end of the financial year.

(2) The Minister must submit those consolidated financial statements, prepared in accordance with generally recognised accounting practice, whether audited or not, to Parliament within six months after the end of the financial year to which they relate.

Part 2: National Revenue Fund

Control of National Revenue Fund

10. The National Treasury is in charge of the National Revenue Fund and must enforce compliance with the provisions of section 213 of the Constitution, namely that—

- *(a)* all money received by the national government must be paid into the Fund, except money reasonably excluded by this Act or another Act of Parliament; and
- *(b)* no money may be withdrawn from the Fund, except—
  - (i) in terms of an appropriation by an Act of Parliament; or
  - (ii) a direct charge against the Fund when permitted by the Constitution, this Act or another Act of Parliament.

Deposits into National Revenue Fund

11. (1) All money received by the national government must be paid into the National Revenue Fund, except—

- *(a)* money received by Parliament;
- *(b)* money received in the ordinary course of its operations by a government business enterprise under the ownership control of the national executive;
- *(c)* money received by a national department operating a trading entity, in the ordinary course of operating the trading entity;
- *(d)* money received from donor agencies and to be deposited in the Reconstruction and Development Programme Fund;
- *(e)* money received by the national government in trust for a specific person or category of persons or for a specific purpose; and
- *(f)* any other money received by the national government which is excluded by an Act of Parliament from payment into the Fund.

(2) Draft legislation which excludes any money from payment into the National Revenue Fund may be introduced in Parliament only after the Minister has been consulted on the reasonableness of the exclusion and has consented to the exclusion.

(3) Money that must be paid into the National Revenue Fund is paid into the Fund by depositing it into a bank account of the Fund in accordance with any prescribed requirements

Withdrawal of exclusions

12. (1) The National Treasury may withdraw, from a date determined by it, any exclusion granted in terms of section 11(1)*(b)*, *(c)* or *(e)* if—

- *(a)* the exclusion is no longer reasonable within the context of section 213(1) of the Constitution; or
- *(b)* the Treasury regards the withdrawal of the exclusion to be necessary for transparency or more effective and accountable financial management.

(2) From the date on which the withdrawal of the exclusion takes effect until the end of the relevant financial year, the National Treasury may transfer money from the National Revenue Fund, as a direct charge against the Fund, to the institution affected by the withdrawal of the exclusion, provided that the amount of the transfer does not exceed the amount that would otherwise have been excluded from payment into the Fund.

Cash management and banking arrangements for National Revenue Fund

13. The National Treasury must establish appropriate and effective cash management and banking arrangements for the National Revenue Fund.

Withdrawals and investments from National Revenue Fund

14. (1) Only the National Treasury may withdraw money from the National Revenue Fund, and may do so only—

- *(a)* to provide funds that have been authorised—
  - (i) in terms of an appropriation by an Act of Parliament; or

(ii) as a direct charge against the National Revenue Fund provided for in the Constitution, this Act or any other Act of Parliament;

(b) to invest temporarily, in the Republic or elsewhere, money that is not immediately needed;

(c) to refund money invested by a province in the National Revenue Fund; or

(d) to refund money incorrectly paid into, or which is not due to, the National Revenue Fund.

(2) A payment in terms of subsection (1)*(b)*, *(c)* or *(d)* is a direct charge against the National Revenue Fund.

Use of funds in emergency situations

15. (1) The national executive may authorise the use of funds from the National Revenue Fund to defray extraordinary expenditure which is not provided for in the current budget and which cannot without serious prejudice to the public interest be postponed until the next budget.

(2) The combined amount of any authorisations in terms of subsection (1), may not exceed two per cent of the total amount appropriated in the current annual national budget.

(3) An amount authorised in terms of subsection (1) is a direct charge against the National Revenue Fund until appropriated by an Act of Parliament.

(4) An amount authorised in terms of subsection (1) must—

(a) be reported to the National Assembly within seven Assembly working days;

(b) be reported to the Auditor-General within 14 days; and

(c) be attributed to a vote.

(5) Expenditure in terms of subsection (1) must be included in the next adjustments budget.

CHAPTER 3

PROVINCIAL GOVERNMENT

Part 1: Provincial treasuries

Establishment

16. (1) There is a provincial treasury for each province, consisting of —

(a) the MEC for finance in the province, who is the head of the provincial treasury; and

(b) the provincial department responsible for financial matters in the province.

(2) The MEC for finance as the head of a provincial treasury takes the policy decisions of the provincial treasury and all other decisions not delegated by the MEC in terms of section 18.

Functions and powers

17. (1) A provincial treasury must—

(a) plan and prepare the provincial budget;

(b) exercise control over the implementation of the provincial budget;

(c) exercise revenue, expenditure, asset and liability management and control in provincial government institutions;

(d) ensure that provincial fiscal policies are consistent with national macroeconomic and fiscal objectives; and

(e) implement treasury norms and standards prescribed in terms of this Act.

(2) A provincial treasury may—

(a) issue provincial treasury instructions not inconsistent with this Act;

- *(b)* approve a procurement and provisioning system in accordance with any national framework;
- *(c)* enforce the implementation of national treasury norms and standards and the procurement, provisioning, banking, cash management and investment framework in the province;
- *(d)* assist provincial government institutions in building their capacity for efficient, effective and transparent financial management;
- *(e)* investigate any system of financial management and internal control applied by a provincial government institution;
- *(f)* intervene by taking appropriate steps, including the withholding of funds, to address a serious or persistent material breach of these norms and standards by a provincial government institution; and
- *(g)* do anything further that is necessary to fulfil its responsibilities effectively.

Assignment of powers and duties

18. (1) The MEC for finance in a province may delegate any of the provincial treasury's powers in terms of this Act to the head of the department referred to in section 16(1)*(b)*, or instruct that official to perform any of the treasury's duties.

(2) A delegation or instruction in terms of subsection (1)—
- *(a)* is subject to any limitations or conditions the MEC for finance may impose;
- *(b)* may include the power to sub-delegate; and
- *(c)* does not divest the MEC for finance of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The MEC for finance may confirm, vary or revoke any decision taken by an official in consequence of a delegation or instruction, subject to any rights that may have become vested.

Part 2:Provincial Revenue Funds

Control of Provincial Revenue Funds

19. A provincial treasury is in charge of the Provincial Revenue Fund of a province and must enforce compliance with the provisions of section 226 of the Constitution, namely that—
- *(a)* all money received by the provincial government must be paid into the Fund, except money reasonably excluded by this Act or another Act of Parliament; and
- *(b)* no money may be withdrawn from the Fund, except—
  - (i) in terms of an appropriation by a provincial Act; or
  - (ii) as a direct charge against the Fund when permitted by the Constitution or a provincial Act.

Deposits into Provincial Revenue Funds

20. (1) All money received by a provincial government, including its equitable share and grants made to it in terms of section 214 of the Constitution, must be paid into its Provincial Revenue Fund, except—
- *(a)* money received by its provincial legislature;
- *(b)* money received in the ordinary cause of its operations by a government business enterprise under the ownership control of the provincial executive, and as approved by the National Treasury;
- *(c)* money received by a provincial department operating a trading entity, in the ordinary cause of operating the trading entity;
- *(d)* money received by the provincial government in trust for a specific person or category of persons or for a specific purpose; and
- *(e)* any other money received by the provincial government and which is excluded by an Act of Parliament from payment into the Fund by an Act of Parliament.

(2) Draft legislation which excludes any money from payment into a Provincial Revenue Fund may be introduced in Parliament only after the Minister has been consulted on the reasonableness of the exclusion and has consented to the exclusion.

(3) Money that must be paid into a Provincial Revenue Fund is paid into the Fund by depositing it into a bank account of the Fund in accordance with any prescribed requirements.

Withdrawal of exclusions

21. (1) The National Treasury may withdraw, from a date determined by it, any exclusion granted in terms of section 20(1)*(b)*,*(c)* or *(d)* if—

(a) the exclusion is no longer reasonable within the context of section 226 of the Constitution; or

(b) the National Treasury regards the withdrawal of the exclusion to be necessary for transparency or more effective and accountable financial management.

(2) From the date on which the withdrawal of the exclusion takes effect until the end of the relevant financial year, a provincial treasury may transfer money from the Provincial Revenue Fund, as a direct charge against the Fund, to the institution affected by the withdrawal of the exclusion—

(a) if a provincial Act provides for the transfer; and

(b) provided that the amount of the transfer does not exceed the amount that would otherwise have been excluded from payment into the Fund.

Withdrawals from Provincial Revenue Funds

22. (1) Only a provincial treasury may withdraw money from a Provincial Revenue Fund, and may do so only—

(a) to provide funds that have been authorised—

(i) in terms of an appropriation by a provincial Act; or

(ii) as a direct charge against the Provincial Revenue Fund provided for in the Constitution or a provincial Act; or

(b) to refund money incorrectly paid into, or which is not due to, the Provincial Revenue Fund.

(2) A payment in terms of subsection (1)*(b)* is a direct charge against the Fund if a provincial Act so provides.

Cash management and banking arrangements for Provincial Revenue Funds

23. A provincial treasury must establish appropriate and effective cash management and banking arrangements for its Provincial Revenue Fund in accordance with any framework as may be prescribed in terms of section 8.

Use of funds in emergency situations

24. (1) A provincial executive may authorise the use of funds from its Provincial Revenue Fund to defray extraordinary expenditure which is not provided for in the current provincial budget and which cannot without serious prejudice to the public interest be postponed until the next budget.

(2) The combined amount of any authorisations in terms of subsection (1) may not exceed one per cent of the total amount appropriated in the current annual provincial budget.

(3) An amount authorised in terms of subsection (1) is a direct charge against the Provincial Revenue Fund if a provincial Act so provides, but that amount must be subsequently appropriated by an Act of the province within that financial year.

(4) An amount authorised in terms of subsection (1) must —

(a) be reported to the provincial legislature within seven legislature working days;

(b) be reported to the Auditor-General within 14 days; and

(c) be attributed to a vote

(5) Expenditure in terms of subsection (1) must be included in the next adjustments budget.

Annual consolidated financial statements

25. (1) A provincial treasury must—
- *(a)* prepare consolidated financial statements, in accordance with generally recognised accounting practice, for each financial year reflecting the financial position, operations and cash flows of provincial government institutions and the provincial legislature in the province; and
- *(b)* submit those statements to the Auditor-General within three months after the end of the financial year.

(2) The MEC for finance in a province must submit the consolidated financial statements, prepared in accordance with generally recognised accounting practice, whether audited or not, to the provincial legislature within six months after the end of the financial year to which the statements relate.

CHAPTER 4

BUDGET PROCESS

Annual budget and introduction

26. (1) Parliament and each provincial legislature must appropriate money for each financial year in an annual budget for the requirements of the state and the province, respectively.

(2) The Minister must table the annual budget for a financial year in the National Assembly before the start of that financial year or, in exceptional circumstances, on a date as soon as possible after the start of that financial year, as the Minister may determine.

(3) The MEC for finance in a province must table the provincial annual budget for a financial year in the provincial legislature not later than two weeks after the tabling of the annual national budget, but the Minister may approve an extension of time for the tabling of a provincial budget.

National adjustments budgets

27. (1) The Minister may table an adjustments budget in the National Assembly as and when necessary.

(2) An adjustments budget may only provide for—
- *(a)* adjustments required due to significant or unexpected economic or financial events adversely affecting the fiscal targets set in the annual budget;
- *(b)* unforeseen and unavoidable expenditure recommended by the national executive;
- *(c)* any extraordinary expenditure in terms of section 15;
- *(d)* the transfer of funds between votes or to follow the transfer of functions; and
- *(e)* roll over of unspent funds from the preceding financial year.

Provincial adjustments budgets

28. (1) The MEC for finance in a province may table an adjustments budget in the provincial legislature as and when necessary.

(2) A provincial adjustments budget may only provide for—
- *(a)* unforeseen and unavoidable expenditure recommended by the provincial executive within a framework determined by the Minister;
- *(b)* the transfer of funds between votes;
- *(c)* the allocation of additional funds that became available to the province; and
- *(d)* other circumstances as may be prescribed.

(3) The Minister may prescribe the circumstances and the time when an adjustments budget may be tabled in a provincial legislature.

Publishing of monthly reports on state of budget

29. (1) After the end of each month, every treasury must publish in the national *Government Gazette* a Statement of Actual Revenue and Expenditure with regard to the relevant government. The Statement must specify—

(a) the actual revenue for that month, and for the financial year up to the end of that month;
(b) the actual expenditure per vote for that month, and for the financial year up to the end of that month; and
(c) actual borrowings for that month, and for the financial year up to the end of that month.

(2) The National Treasury may prescribe—

(a) the format of the Statement of Actual Revenue and Expenditure;
(b) any additional detail the Statement must contain; and
(c) the time when the Statement must be published.

Form and content of annual and multi-year budgets

30. An annual and multi-year budget must be in accordance with a format as may be prescribed, and must in the case of the annual budget at least contain—

(a) estimates of all revenue expected to be raised during the financial year to which the budget relates;
(b) estimates of the total current expenditure for that financial year, differentiating between statutory and discretionary expenditure;
(c) estimates of interest and debt servicing charges, and any repayments on loans;
(d) estimates of capital expenditure for that and future financial years broken down per project or category as may be prescribed;
(e) estimates of all direct charges against the relevant Revenue Fund for that financial year;
(f) proposals for financing any anticipated deficit for that financial year, provided that the deficit is authorised in terms of national legislation;
(g) an indication of intentions regarding borrowing and other forms of public liability as permitted in terms of this Act and any other Act and that will increase public debt during that financial year and future financial years;
(h) the projected estimated revenue, expenditure and any borrowing for the previous financial year; and
(i) any other details as may be prescribed.

Expenditure before annual budget is passed

31. (1) If an annual budget is not passed before the start of the financial year to which it relates, funds may be withdrawn in accordance with this section from the relevant Revenue Fund for the services of the state or the province concerned during that financial year as direct charges against the Fund until the budget is passed.

(2) Funds withdrawn from a Revenue Fund in terms of subsection (1)—

(a) may be utilised only for services for which funds were appropriated in the previous annual budget or adjustments budget; and
(b) ay 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 10 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 that financial year, and any funds withdrawn in terms of that subsection must be regarded as forming part of the funds appropriated in the annual budget for that financial year.

(4) This section does not apply in respect of a province unless a provincial Act provides that the withdrawal of funds in terms of this section is a direct charge against that province's Provincial Revenue Fund.

CHAPTER 5

ACCOUNTING OFFICERS IN NATIONAL AND PROVINCIAL GOVERNMENTS

Accounting officers

32. (1) Every institution to which this Act applies must have an accounting officer.

(2) Subject to subsection (3)—

(a) the head of a national or provincial department must be the accounting officer for the department; and

(b) the chief executive officer of any other institution must be the accounting officer for that institution.

(3) The relevant Treasury may, in exceptional circumstances, approve or instruct in writing that a person other than the person mentioned in subsection (2) be the accounting officer for an institution to which this Act applies.

(4) If the accounting officer is a party to a performance contract, the provisions of sections 34 to 37, as may be appropriate, are regarded as forming part of that contract.

Acting accounting officers

33. When an accounting officer is absent or otherwise unable to perform the functions of accounting officer, or during a vacancy, the functions of accounting officer must be performed by the official acting in the place of that accounting officer.

Part 1: Responsibilities of accounting officers

Responsibilities of accounting officers

34. (1) An accounting officer for an institution to which this Act applies—

(a) must ensure that that institution has and maintains an effective, efficient and transparent system of financial management and internal control;

(b) is responsible for the effective, efficient, economical and transparent use of financial and other resources of the institution concerned;

(c) must take effective and appropriate steps to—

(i) collect all revenue due to the institution concerned; and

(ii) prevent wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with legislation;

(d) is responsible for the management, including the safeguarding, of the assets and for the management of the liabilities of that institution;

(e) must comply with any tax, levy, pension and audit commitments as may be required by legislation;

(f) must not deliberately structure contracts or employment conditions to avoid or delay the payment of tax or levy commitments;

(g) must settle intergovernmental claims within the prescribed or agreed period;

(h) must comply, and ensure compliance by the institution concerned, with the provisions of this Act;

(i) must take effective and appropriate disciplinary steps against any employee of the institution concerned who—

(i) contravenes or fails to comply with a provision of this Act;

(ii) commits an act which undermines the financial management and internal control system of the institution; or

(iii) makes or authorises an unauthorised expenditure;

(j) must ensure that before transferring any funds, other than grants in terms of the annual Division of Revenue Act to any entity, that entity implements effective, efficient and transparent financial management and internal control systems; and

(k) must enforce compliance with any prescribed conditions if that institution gives financial assistance, to any organisation or person.

(2) An accounting officer may not commit an institution to which this Act applies to any liability, guarantee or indemnity which may require the future appropriation of funds, without following the prescribed procedures.

Accounting officers' responsibilities relating to budgetary control

35. (1) The accounting officer of a national or provincial department is responsible for ensuring that—

(a) expenditure of that department is in accordance with the vote of the department**;** and

(b) effective and appropriate steps are taken to prevent unauthorised expenditure.

(2) An accounting officer, for the purposes of subsection (1), must—

(a) take effective and appropriate steps to prevent any overspending of a vote;

(b) report to the executive authority and the relevant treasury any impending—

(i) undercollection of revenue due;

(ii) shortfalls in budgeted revenue; and

(iii) overspending of a vote; and

(c) comply with any remedial measures imposed in terms of this Act to prevent overspending of a vote.

Accounting officers' reporting responsibilities

36. (1) The accounting officer of an institution to which this Act applies—

(a) must keep full and proper records of the financial affairs of the institution concerned in accordance with any prescribed norms and standards;

(b) must prepare financial statements for each financial year in accordance with generally recognized accounting practice;

(c) must submit the audited statements to the executive authority responsible for that institution not later than 14 days after receiving the audited statements;

(d) must submit an annual report within four months after the end of a financial year to the relevant legislature, which report must include those audited statements if audited statements are available; and

(e) is responsible for the submission by the institution of all reports, returns, notices and other information to Parliament, a provincial legislature, an executive authority or a treasury, as may be required by this Act.

(2) The accounting officer must submit the statements referred to in subsection (1)*(b)*, whether audited or not, to the relevant treasury and the Auditor-General within 60 days after the end of the financial year to which they relate.

(3) For the purpose of this section, the accounting officer of a government business enterprise must report in accordance with the legislation establishing that enterprise or in accordance with the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992). For the purpose of assisting a relevant treasury to prepare consolidated financial statements, the accounting officer must provide the relevant treasury with the adjustments required to report on the basis of generally recognised accounting practice.

(4) The accounting officer of an institution to which this Act applies must—

(a) prepare monthly financial statements on actual revenue and expenditure in the prescribed format; and

- *(b)* within 15 days of the end of each month submit to the relevant treasury and, in the case of national and provincial government institutions, also to the relevant executive authority—
  - (i) those statements;
  - (ii) a projection of expected expenditure and revenue collection for the remainder of the current financial year; and
  - (iii) a summary of the steps that are to be taken to ensure that the projected expenditure and revenue remain within budget.

Information to be submitted by accounting officers

37. An accounting officer must submit to the relevant treasury or any other institution designated by the relevant treasury, such information, returns, documents, explanations and motivations as the relevant treasury may require.

Financial responsibilities of executive authorities

38. (1) Executive authorities of national and provincial departments must perform their statutory functions within the limits of the funds authorised for those functions.

(2) Any directive by an executive authority of a national or provincial department to the accounting officer of the department having financial implications for the department must be in writing.

(3) If implementation of the directive is likely to result in overspending of the department's vote, the accounting officer will be responsible for any resulting overspending of the vote unless the accounting officer has informed the executive authority in writing of the likelihood of that overspending.

(4) Any decision of the executive authority to proceed with implementation of the directive, must be in writing, and the accounting officer must file a copy of this decision with the National Treasury and the Auditor-General, and if a provincial department is involved, also the provincial treasury.

Part 2: Assignment of functions and powers

Assignment of powers and duties by accounting officers

39. (1) The accounting officer of an institution to which this Act applies may—

- *(a)* delegate any of the accounting officer's powers to an official in that institution; or
- *(b)* instruct any official in that institution to perform any of the accounting officer's duties,

(2) A delegation or instruction in terms of subsection (1) —

- *(a)* is subject to any limitations and conditions prescribed in terms of this Act or as the relevant treasury in a specific case may impose;
- *(b)* is subject to any limitations and conditions the accounting officer may impose;
- *(c)* may be assigned either to a specific individual or to the holder of a specific post;
- *(d)* must be in writing; and
- *(e)* does not divest the accounting officer of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The accounting officer may confirm , vary or revoke any decision taken by an official in consequence of a delegation or instruction, subject to any rights that may have become vested.

Responsibilities of delegatees of accounting officers

40. An official in a national or provincial government institution to whom a power or duty is assigned in terms of section 39—

(a) must ensure that the system of financial management and internal control established for that institution is carried out within the area of responsibility of that official;
(b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;
(c) must take effective and appropriate steps to prevent any unauthorised expenditure and any undercollection of revenue due within that official's area of responsibility;
(d) must comply with the provisions of this Act; and
(e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.

Responsibilities of employees of national and provincial government institutions

41. All employees of an institution to which this Act applies must—
(a) comply with the provisions of this Act;
(b) act with probity at all times; and
(c) perform their duties in an effective, efficient and economical manner.

Part 3: Financial misconduct

Financial misconduct

42. (1) An accounting officer commits an act of financial misconduct if that accounting officer willfully or negligently fails to comply with a requirement of section 34, 35, 36 or 37.

(2) An official of a treasury commits an act of financial misconduct if that official willfully or negligently fails to exercise a power or perform a duty assigned to the official in terms of section 7 or 18.

Regulations

43. (1) The Minister must make regulations applicable to accounting officers and treasury officials in the national and provincial governments prescribing.
(a) the manner and circumstances in which a provincial treasury must report allegations of financial misconduct to the National Treasury;
(b) matters relating the investigation of any allegations;
(c) the establishment of a disciplinary board to hear and decide a charge of financial misconduct against an accounting officer or treasury official, provided that a disciplinary board may only be established if—
(i) the executive authority that is the employer of the accounting officer or treasury official agrees to the establishment of the disciplinary board; and
(ii) no disciplinary proceedings have been instituted against the accounting officer or treasury official in respect of such financial misconduct in terms of any other law;
(d) appropriate procedures to regulate the proceedings of such a disciplinary board, including procedures to ensure a fair hearing;
(e) the sanctions which a disciplinary board may impose or recommend if an accounting officer or treasury official is found guilty, which may include—
(i) a reprimand;
(ii) a fine;
(iii) suspension from office;
(iv) demotion;
(v) a recommendation to lay charges for a criminal prosecution;
(vi) a recommendation for dismissal; and
(vii) any other appropriate sanction; and
(f) any other matters that may facilitate the object of this Part.

(2) The National Treasury must without delay report the findings of a disciplinary board to the National Assembly's or relevant provincial legislature's portfolio committee responsible for public finance.

(3) Nothing in this Act prevents disciplinary action against an accounting officer or a treasury official in terms of the Public Service Act, 1994.

CHAPTER 6

LOANS, GUARANTEES AND INDEMNITIES

Part 1: Loans and guarantees

General principles

44. (1) An institution to which this Act applies may not borrow money or issue a guarantee, or enter into any contract that commits or may commit a Revenue Fund to any future expenditure, unless such borrowing, guarantee or contract is—

- *(a)* authorised by this Act or any other national legislation;
- *(b)* in accordance with any prescribed norms and standards;
- *(c)* in the case of loans for provincial government institutions, within the limits as set in terms of the Borrowing Powers of Provincial Governments Act, 1996 (Act No. 44 of 1996); and
- *(d)* in the case of any other loans, within the limits as may be set by the National Treasury for each financial year.

(2) Only the following persons may borrow money, or issue a guarantee, indemnity or security or make any future financial commitment for or on behalf of a national or provincial government institution:

- *(a)* A national government institution identified in terms of subsection (4): the chief executive officer of the institution.
- *(b)* Any other national government institution or constitutional institution: the Minister or, for a guarantee, another Cabinet member in terms of section 50.
- *(c)* A Provincial government institution: the MEC responsible for finance in the province.

(3) A person mentioned in subsection (2) may not delegate a power conferred in terms of that subsection.

(4) The Minister may identify specific national government institutions for purposes of subsection (2) *(a)*. A national government institution so identified may borrow money through its chief executive officer but only in accordance with a framework determined by the Minister, which may—

- *(a)* require prior National Treasury authorisation for any borrowing in a foreign currency or on a foreign financial market or for any other specific kind of borrowing;
- *(b)* require the submission to the National Treasury of an annual borrowing programme; and
- *(c)* deal with other matter the Minister may regard as relevant.

(5) A provincial government institution may not borrow money or issue a guarantee, indemnity or security or commit that institution to any future financial commitment denominated in a foreign currency or concluded on a foreign financial market.

(6) If a person lends money to an institution to which this Act applies or issues on behalf of that institution a guarantee or indemnity otherwise than in accordance with this section, the state is not bound by the lending contract or the guarantee or indemnity.

(7) Any person, other than a person mentioned in subsection (2), who borrows money, issues a guarantee or indemnity or makes any future financial commitment for or on behalf of a national or provincial government institution or a constitutional institution is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

(8) In the event of an inconsistency between this section and any other legislation this section prevails.

Part 2: Money borrowed by national government

Purposes for which Minister may borrow money

45. The Minister may borrow money in terms of section 44(2) for the following purposes only:
- *(a)* to finance national budget deficits;
- *(b)* to refinance maturing debt;
- *(c)* to obtain foreign currency;
- *(d)* to maintain credit balances on a bank account of the National Revenue Fund; or
- *(e)* to regulate internal monetary conditions.

Signing of loan agreements

46. The Minister, on conditions determined by the Minister, may authorise another person to sign a loan agreement when the Minister borrows money in terms of section 44(2).

Repayments of loans, etc., to be direct charges

47. The repayment of money borrowed by the Minister in terms of section 44(2), or repaid in terms of section 49, the interest payable on monies borrowed and any costs associated with such borrowing and approved by the National Treasury, are direct charges against the National Revenue Fund.

National Treasury not responsible for fulfillment of obligations resulting from lien over securities

48. Neither the Minister, nor the National Treasury is responsible for the fulfilment of any obligation resulting from any lien, whether expressed, implied or construed, held over any security issued in terms of this Act, despite the fact that the Minister or the National Treasury was notified of the lien.

Repayment, conversion and consolidation of loans

49. The Minister may on such terms and conditions as the Minister may determine and, when necessary, with the concurrence of the lender—
- *(a)* repay any loan prior to the redemption date of that loan;
- *(b)* convert the loan into any other loan; or
- *(c)* consolidate two or more loans into an existing or new loan.

Guarantees, indemnities and securities

50. (1) A Cabinet member, with the written concurrence of the Minister and subject to any conditions approved by the Minister, may issue a guarantee, indemnity or security in respect of a financial commitment incurred or to be incurred arising from a loan by a national government institution or a constitutional institution.

(2) Any payment under a guarantee, indemnity or security issued in terms of subsection (1) is a direct charge against the National Revenue Fund and any such payment must in the first instance be defrayed from the funds budgeted for the department that is concerned with the issue of the guarantee, indemnity or security in question.

(3) A Cabinet member who seeks the concurrence from the Minister for the issue of a guarantee, or indemnity or security in terms of subsection (1) must provide the Minister with all the relevant information as the Minister may require regarding the issue of such guarantee indemnity or security and the relevant financial commitment.

(4) The circumstances relating to any payments under a guarantee issued in terms of subsection (1) must be reported to Parliament by the responsible Cabinet member.

(5) The National Treasury must publish a statement in the national *Government Gazette*, within 60 days after the end of a financial year containing all relevant details per financial year of commitments in Rand and different foreign currency entered into in terms of subsection (1).

Regulations

51. The Minister must prescribe by regulation matters that are to be dealt with in connection with the borrowing of money by a national government institution, and such matters must include—

(a) the issue of a prospectus for any loan raised ;
(b) the appointment of agents in connection with the issue, management, repurchase or repayment of securities issued with regard to any loan raised ;
(c) the determination of the interest rate payable on loans made available from the National Revenue Fund or on debt due to the national government; and
(d) any other matter which the Minister may regard as relevant.

CHAPTER 7

UNIFORM TREASURY NORMS AND STANDARDS

Treasury regulations and instructions

52. (1) The National Treasury may make regulations and issue instructions not inconsistent with this Act concerning—

(a) any matter that may be prescribed in terms of this Act;
(b) matters for which the prior approval of the Treasury must be obtained, including—
  (i) any specific kind of expenditure;
  (ii) any scales of fees, other charges or rates relating to revenue accruing to, or expenditure from, a Revenue Fund;
  (iii) the rendering of any free services;
  (iv) the writing off of losses of state money or other state assets or amounts owed to the state;
  (v) the cancellation or variation of contracts to the detriment of the state;
  (vi) the settlement of claims by or against the state;
  (vii) the waiver of claims by the state;
  (viii) the remission of money due to a Revenue Fund, refunds of revenue and payments from a Revenue Fund, as an act of grace;
  (ix) gifts from a Revenue Fund or of other state assets;
  (x) the alienation, letting or other disposal of state assets;
  (xi) acceptance of sponsorships by the state;
  (xii) the acceptance of gifts to the state;
(c) the recovery of losses and damages;
(d) the condonation of non-compliance with a provision of these regulations or instructions or a condition in terms of this Act;
(e) the charging of expenditure against particular votes;
(f) the handling of, and control over, trust money and property;
(g) the establishment of and control over trading entities;
(h) the improvement and maintenance of immovable state assets;
(i) gifts to the state, and assets which accrue to the state by operation of law;
(j) wasteful and unauthorized expenditure;
(k) financial management and internal control;
(l) vouchers or other proofs of receipts or payments which are defective or have been lost or damaged;
(m) the administration of this Act; and
(n) any other matter that may facilitate the application of this Act.

(2) Treasury regulations and instructions may differentiate between—

(a) different categories of institutions to which this Act applies; and

(b) different categories of accounting officers.

(3) The National Treasury may approve a departure from a treasury regulation or instruction.

CHAPTER 8

ACCOUNTING STANDARDS BOARD

Establishment

53. (1) The Minister by regulation must establish a board to be known as the Accounting Standards Board, to set standards of generally recognised accounting practice as required by section 216(1)*(a)* of the Constitution, for the annual financial statements of—

(a) a national or provincial government institution;
(b) Parliament or a provincial legislature;
(c) constitutional institution; or
(d) municipality or a board, commission, company, corporation, fund or other entity under the ownership control of a municipality.

(2) The Accounting Standards Board is a juristic person.

Composition

54. (1) The Minister, after consulting the Auditor-General, must determine the composition of the Accounting Standards Board and appoint the members of the Board.

(2) The Board may establish its own operating procedures.

Regulations

55. (1) The Minister, after consulting with the Auditor-General, may make regulations —

(a) concerning the qualifications, remuneration, term of office and removal of members of the Accounting Standards Board, the filling of vacancies, the chairperson of the Board, and the finances and administration of the Board;
(b) prescribing the standards to be set by the Board in terms of section 53(1); and
(c) concerning any other matter that may facilitate the proper functioning of the Board or the implementation of those standards.

(2) The Minister must consult the Board on the implementation date of a regulation made in terms of subsection (1)*(b)*.

(3) Different regulations may be made in terms of subsection (1)*(b)* for different categories of institutions to which this Act apply.

CHAPTER 9

MISCELLANEOUS

Exemptions

56. The Minister by notice in the national *Government Gazette* may exempt any institution to which this Act applies, or any category of those institutions, from any specific provisions of this Act for a period determined in the notice.

Transitional provisions

57. Until the Accounting Standards Board is established the National Treasury may perform the functions of the Board.

Repeal of legislation

58. The legislation mentioned in the Schedule are repealed to the extent specified in the third column.

Short title and commencement

59. This Act is called the Treasury Control Act, 1998, and takes effect on 1 April 1999, except those provisions determined by the Minister by notice in the national *Government Gazette* which will take effect on a date determined in the notice, but which may not be a date later than 1 April 2003.

Schedule

(REPEAL OF LEGISLATIONS)

(Section 58)

No. and year of act	Short title	Extent of repeal
(a) Act No. 66 of 1975	Exchequer Act, 1975	The whole, except sections 28, 29,30
Act No. 106 of 1976	Financial Arrangements with the Transkei Act, 1976	The whole
Act No. 93 of 1977	Financial Arrangements with Bophuthatswana Act, 1977	The whole
Act No. 105 of 1979	Financial Arrangements with Venda Act, 1979	The whole
Proclamation No. R.85 of 1968	South-West Africa Constitution Act, 1968 (Act No. 39 of 1968)	Part 3
Act No. 67 of 1980	Railways and Harbours Acts Amendment Act, 1980	Section 19
Act No. 29 of 1981	Railways and Harbours Acts Amendment Act, 1981	Section 21
Act No. 118 of 1981	Financial Arrangements with Ciskei Act, 1981	The whole
Act No. 100 of 1984	Exchequer and Audit Amendment Act, 1984	The whole
Act No. 9 of 1989	Legal Succession of the South African Transport Services Act, 1989	Schedule 2 Part 6 of the Act insofar as it relates to the Exchequer Act, 1975
Act No. 120 of 1991	Finance Act, 1991	Sections 14, 15 and 16
Act No. 96 of 1992	Part Appropriation Acts Abolition Act, 1992	The whole
Act No. 69 of 1993	Exchequer Amendment Act, 1993	The whole
Act No. 123 of 1993	Finance Act, 1993	The whole
Act No. 142 of 1993	Exchequer Second Amendment Act, 1993	The whole
Act No. 182 of 1993	Exchequer Third Amendment Act, 1993	The whole
Act No. 41 of 1994	Finance Act, 1994	Sections 17 and 18
(b) Act No. 66 of 1975	Exchequer and Audit Act, 1975	The whole insofar as it is in force in the area of the former Republic of Transkei
Act No. 102 of 1976	Finance Act, 1976	Sections 23, 24 and 25 insofar as it is in force in the area of the former Republic of Transkei
(c) Act No. 29 of 1992 (Bophuthatswana)	Exchequer Act, 1992	The whole
Act No. 16 of 1993 (Bophuthatswana)	Exchequer Amendment Act, 1993	The whole
(d) Act No. 66 of 1975	Exchequer and Audit Act, 1975	The whole insofar as it is in force in the area of the former Republic of Venda
Act No. 111 of 1977	Finance Act, 1977	Sections 9, 10 and 11 insofar as it is in force in the area of the former Republic of Venda

No. and year of act	Short title	Extent of repeal
Act No. 94 of 1978	Finance Act, 1978	Sections 12, 13 and 14 insofar as it is in force in the area of the former Republic of Venda
Proclamation No. R.85 of 1979	Exchequer and Audit Proclamation	Sections 16 and 17 insofar as it is in force in the area of the former Republic of Venda
Act No. 21 of 1983 (Venda)	Exchequer and Audit Amendment Act, 1983	The whole
Act No. 18 of 1987 (Venda)	Exchequer and Audit Amendment Act, 1987	The whole
Act No. 28 of 1989 (Venda)	Exchequer and Audit Amendment Act, 1989	The whole
Proclamation No. 25 of 1993 (Venda)	Exchequer and Audit Amendment Act, 1993	The whole
(e) Act No. 28 of 1985 (Ciskei)	Exchequer and Audit Act, 1985	The whole

MEMORANDUM ON THE OBJECTS OF THE TREASURY CONTROL BILL, 1998

1. INTRODUCTION

The Treasury Control Bill, 1998, gives effect to sections 213, 215, 216, 217, 218 and 219 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996). These sections require national legislation: to establish a National Treasury, to introduce generally recognised accounting practices, to introduce uniform treasury norms and standards, to prescribe measures to ensure transparency and expenditure control in all spheres of government, and to set the operational procedures for borrowing, guarantees, procurement and oversight over the various National and Provincial Revenue Funds.

2. CURRENT POSITION

2.1 National departments are governed by the Exchequer Act (No 66 of 1975), whilst provinces are governed by their own provincial Exchequer Acts. Other national entities like public enterprises are governed by their own legislation.

2.2 Financial accountability is undermined by the fact that different legislation applies for different entities. Further, existing legislation regulating financial management is narrowly focused on expenditure control.

3. BACKGROUND AND APPROACH

3.1 The Treasury Control Bill gives effect to section 216 (1) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), which requires national legislation to ''establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing—

(a) generally recognised accounting practice;
(b) uniform expenditure classifications; and
(c) uniform treasury norms and standards''.

3.2 The Bill also gives effect to other sections in Chapter 13 of the Constitution. These sections are:

(a) Section 213 that limits exclusions and withdrawals from the National Revenue Fund through an Act of Parliament.
(b) Section 215 which notes that budgets and the budgetary process ''must promote transparency, accountability and the effective financial management of the economy, debt and the public sector'' and for national legislation to ''prescribe'' budget formats for all the spheres of government.
(c) Section 217 on procurement to be ''in accordance with a system which is fair, equitable, transparent, competitive and cost-effective''.
(d) Section 218 on the conditions for the issue of guarantees by a government in any sphere.
(e) Section 226 that limits an exclusion from a provincial revenue fund through an Act of Parliament.
(f) Sections 100 and 216 on intervention by the national government when an organ fails to perform an executive function related to financial management, circumstances under which funds may be withheld.

3.3 The Bill adopts an approach to financial management which focuses on outputs and responsibilities rather than the rule-driven approach of the current Exchequer Acts.

3.4 This Bill assumes that the political head of a department (Cabinet Minister or a provincial MEC) is responsible for policy matters and outcomes; this includes seeking Parliamentary (or provincial legislature) approval and adoption of the line-function budget vote. The head official (Director-General of a national department or provincial head of department) is responsible for outputs and implementation, and is accountable to Parliament for the financial management in the implementation of that budget. This approach is in line with the approach of the new

Public Service regulations, which relies on a performance-driven system based on measurable outputs.

3.5 The Bill is part of a broader strategy on improving financial management in the public sector. The Bill itself assumes a phased approach towards improving the quality of financial management in the public sector. This Bill lays the foundation for the first phase, as it focuses on the basics of financial management, like the introduction of proper financial management systems, appropriation control and the accountability arrangements for the management of budgets. Subsequent phases will focus on the efficiency and effectiveness of programmes and best-practice financial management—these can only be systematically introduced after the basics of financial management are in place.

3.6 This Bill will replace or override the national and provincial Exchequer Acts, and supersede any other financial management provisions in other Acts.

4. KEY POLICY ISSUES

4.1 Composition of the National Treasury

The National Treasury comprises of the Minister together with the Departments of Finance and State Expenditure. The Minister is the head of the Treasury.

4.2 Powers of the National Treasury

The Constitution confers extensive powers on national government to determine the financial management framework over all organs of state, in all spheres of government. National government must, through national legislation, determine uniform treasury norms and standards. The National Treasury is further expected to monitor and enforce these norms. The National Treasury, therefore, not only implements the budget of the national government, but plays an oversight role over the practices of other organs of state in all spheres of government.

4.3 Establishment of Provincial Treasuries— their Role and Function

This Bill establishes provincial treasuries, which are responsible for preparing and managing provincial budgets, and enforcing uniform treasury norms and standards as prescribed by the National Treasury and this Act.

4.4 Application of this Act

This Bill gives effect to section 216 and other sections of the Constitution. This Bill will apply to the national and provincial spheres, and some entities under their ownership control. Parliament, provincial legislatures and independent institutions established by the Constitution are also covered in this Bill.

4.5 The Chain of Financial Accountability

An important objective of this Bill is to put in place a more effective financial accountability system by clarifying roles and responsibilities. The head of a department will be accountable to Parliament for all entities under the ownership control of that department. The accounting officers of entities other than national or provincial departments will, therefore, be accountable to the head of a department, and to Parliament, via such a head.

4.6 Responsibilities of Accounting Officers

This Bill confers specific responsibilities on accounting officers. The Bill vests four key responsibilities, which are:

(a) the operation of basic financial management systems, including internal controls in departments and any entities they control;
(b) to ensure that departments do not overspend their budgets;
(c) to report on a monthly and annual basis, including the submission of annual financial statements two months after the end of a financial year; and
(d) to publish annual reports in a prescribed format which will introduce performance reporting.

Accounting officers who are negligent and make no effort to comply with these responsibilities will face strict disciplinary sanctions, including dismissal. Similar sanctions will apply to treasury officials failing to carry out their responsibilities. The new Public Service Act regulations and the trend towards performance contracts will complement this approach.

4.7 Improved information and timely submission of financial statements

The Bill aims to address the problem of the late submission of financial statements within government, to comply with the constitutional obligations for generally recognised accounting practices and greater transparency, and to improve financial management and accountability through better and more timely information flows.

5. SUMMARY OF BILL

Chapter One of the Bill deals with definitions, objects, application and amendment of this Bill. The Bill will apply to national and provincial government institutions, which includes national and provincial departments, and the entities under their ownership control. Key definitions to note are those of ownership control, government enterprises, and unauthorised expenditure. A procedure to amend this Bill is included and is intended to prevent other Acts of Parliament from amending or inadvertently by-passing the provisions of this Bill.

Chapter Two of the Bill establishes the National Treasury, deals with its composition, functions, powers and responsibilities. The National Treasury is comprised of the Minister and the Departments of Finance and State Expenditure. The Minister is empowered to delegate the day-to-day operations of the Treasury to the heads of the two departments. The National Treasury is empowered to develop the overall macroeconomic and fiscal framework, coordinate intergovernmental fiscal relations and the budget-preparation process, manage the implementation of a budget and promote and enforce revenue, asset and liability management. The National Treasury is also empowered to determine a banking and cash management framework, and is empowered to require banks to provide information on the banking accounts of national and provincial institutions. The chapter also gives effect to sections 213 of the Constitution, on the management of the National Revenue Fund, any exclusions to depositing money received, and the authorization required before any expenditure.

Chapter Three establishes provincial treasuries and deals with their composition, powers and functions, and the management of provincial revenue funds.

Chapter Four on the Budget process gives effect to section 215 of the constitution on the timing and content of national and provincial budgets, and the reporting requirements that will promote greater transparency in the implementation of a budget.

Chapter Five ensures that all national and provincial institutions and entities have accounting-officers, and spells out their responsibilities, and the disciplinary sanctions that will apply in the event of negligence in fulfilling these responsibilities. This chapter obligates accounting officers to produce monthly and annual financial reports for their political heads (executive authority), and outlines the responsibilities for political heads and accounting officers to prevent overspending on budgets.

Chapter Six of the Bill outlines general principles on borrowing and the issuing of guarantees. This chapter gives effect to section 218 of the Constitution on the issuing of guarantees. The chapter also regulates the borrowing operations of the national government, and determines the person who can borrow on behalf of any national or provincial government entity.

Chapter Seven of the Bill lists the areas over which the National Treasury is empowered to issue uniform norms and standards.

Chapter Eight establishes an Accounting Standards Board which will have the power to determine the generally recognised accounting practices for the public sector.

Chapter Nine deals with transitional and other miscellaneous issues related to the implementation of this Bill and when it takes effect. Some of the provisions of the Bill cannot be implemented immediately, and could take up to five years to implement fully (eg the sections relating to consolidated financial statements). The transitional arrangements will allow the Minister to phase in such provisions.

6. PARLIAMENTARY PROCEDURE

In the opinion of the State Law Advisers and the Department of Finance the Bill should be dealt with in accordance with section 76 of the Constitution.