

REPUBLIC OF SOUTH AFRICA

INHERITED DEBT RELIEF BILL

(As introduced in the National Assembly)

(MINISTER OF FINANCE)

[B 82—98]



REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE VERLIGTING VAN NAGELATE SKULD

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN FINANSIES)

[W 82—98]

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BILL

To empower the Minister of Finance to borrow the amount of R936 138 000 during the financial year ending on 31 March 1999, for the purpose of discharging certain debts of the former Transkei, Bophuthatswana, Venda and Ciskei and former self-governing territories of Gazankulu, Kangwane, Kwandebele and Lebowa that had devolved upon certain provinces in terms of the Constitution of the Republic of South Africa, 1993, and were still outstanding on 31 March 1995, and, where applicable, compensating such a province for its partial repayment of such a debt after that date; to make arrangements for the transfer to those provinces of the money so borrowed and for their payment of the balances outstanding on those debts; and to provide for incidental matters.

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

Definitions

1. In this Act, except if inconsistent with the context—
- (i) “affected province” means any one of the following provinces, namely— 5
 - (a) Eastern Cape;
 - (b) Mpumalanga;
 - (c) North West; and
 - (d) Northern Province; (i)
 - (ii) “former homeland” means the former— 10
 - (a) Republic of Transkei, Bophuthatswana, Venda or Ciskei; or
 - (b) self-governing territory of Gazankulu, Kangwane, Kwandebele or Lebowa; and (iii)
 - (iii) “inherited debt” means the liabilities incurred on behalf of any former homeland, which— 15
 - (a) in terms of section 239(3) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), or by virtue of any allocation made in terms of that section, had devolved upon an affected province;
 - (b) was still outstanding on 31 March 1995; and
 - (c) is represented by the amount as specified in column 2 of the Schedule to 20 this Act opposite the name of the affected province concerned (which is specified in column 1 of that Schedule). (ii)

Minister of Finance may borrow money to discharge affected provinces’ inherited debts and compensate them for partial repayment

2. (1) Despite the provisions of any other law, the Minister of Finance may borrow an amount of R936 138 000 during the financial year ending on 31 March 1999, for the purposes of settling the outstanding balances of the affected provinces’ inherited debts and compensating any affected province for having partially settled its inherited debt after that date, as provided hereafter. 25

(2) (a) The Minister of Finance will transfer to each affected province from the money so borrowed— 30

- (i) the sum of money that may be required to settle the outstanding balance of the affected province’s inherited debt; and

(ii) where applicable, a sum of money equivalent to the total amount the affected province had repaid on its inherited debt after 31 March 1995.

(b) A transfer in terms of paragraph (a), will be made on the terms and conditions that the Minister of Finance determines, subject to subsection (3).

(3) The money so transferred to an affected province for the purpose of settling the outstanding balance of its inherited debt, must be utilised for that purpose without delay. 5

(4) An affected province must keep separate accounts in respect of the money so transferred to it.

Short title

3. This Act is called the Inherited Debt Relief Act, 1998.

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SCHEDULE

Inherited Debts	
Column 1: Name of Affected Province	Column 2: Amount of Inherited Debt (R'000)
Eastern Cape	R596 700
Mpumalanga	R 58 281
North West	R189 124
Northern Province	<u>R 92 033</u>
TOTAL (R'000):	<u>R936 138</u>

MEMORANDUM ON THE OBJECTS OF THE INHERITED DEBT RELIEF BILL, 1998

BACKGROUND

1. After the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993 — “the Interim Constitution”), the Department of State Expenditure (“the Department”), in conjunction with the Auditor-General and the provincial treasuries, embarked on a project to complete and update outstanding financial statements of the former TBVC countries (i.e. the former Transkei, Bophuthatswana, Venda and Ciskei) and former self-governing territories. Financial statements were prepared for that purpose so as to reflect their financial position as at 31 March 1995, which statements were audited by the Auditor-General.

2. However, in the course of that project and in closing the books of account of those former countries and territories, it was found that there were nett debts to the amount of R936 138 000 outstanding by the former TBVC countries and the former self-governing territories of Gazankulu, Kangwane, Kwandebele and Lebowa, comprised mainly of bank overdrafts, outstanding current liabilities and amounts due to certain pension funds. At that point in time, it was agreed that those debts must devolve upon or be allocated to the new provinces of Eastern Cape, Mpumalanga, North West and Northern Province (under section 239(3) of the Interim Constitution), and that once the accounts of those former countries and territories were finalised, the necessary legislation would be introduced in Parliament with a view to affording those new provinces (hereafter called the affected provinces) relief of the debts so inherited by them.

3. The Auditor-General’s reports on those financial statements, which were evaluated by the Department during November 1997, revealed that the Auditor-General was unable to issue an audit opinion on the majority of the amounts reflected in the financial statements of the former TBVC countries and former self-governing territories of Gazankulu, Kangwane, Kwandebele and Lebowa (hereafter jointly called the former homelands). This inability may be ascribed mainly to the following:

- * The financial statements as completed by the consultants appointed for that purpose did not comply, in most respects, with the generally accepted accounting standards applicable in respect of government departments and governmental institutions.
- * There were found to exist irreconcilable differences between many accounts.
- * In many instances accounting records were missing and could not be reconstructed.
- * Supporting documentation was missing or did not exist at all.

After detailed discussions, the Department and the Auditor-General agreed that it would not be cost-effective to incur any further expense to reconstruct the accounting records of the former homelands and prepare acceptable accounts for them. Such an exercise would take some years to complete and was not likely to render a noticeable improvement. Moreover, there also were no officials available or willing to assist with such an exercise.

In view of these circumstances, the Department was of the opinion that any possible acceptable evidence, such as bank statements, should be utilised to quantify the relevant nett debts of the former homelands as at 31 March 1995.

4. The total amount of the affected provinces’ nett inherited debt of R936 138 000 that has been identified in consultation with the Auditor-General, may be broken down into the following:

4.1 Eastern Cape				R*000
Bank overdraft of the former Transkei as at 31 March 1995 (Nett inherited debt)				<u>596 700</u>
4.2 Mpumalanga				
		R*000	R*000	
Deficits against the former Kwandebele		17 000		
Pension fund contributions of the former Kangwane out- standing on 31 March 1995 (These contributions were paid by the Province of Mpumalanga after that date)		<u>41 281</u>		
Nett inherited debt				<u>58 281</u>
4.3 North West				
	R*000	R*000	R*000	
Bank overdraft as at 31 March 1995	61 600			
<u>Plus Amount borrowed by the Bophuthatswana Public Investment Commissioners against Tribal Trust Account</u>	<u>200 000</u>			
Subtotal		261 600		
<u>Less Investments in Bophuthatswana Bonds</u>		<u>72 476</u>		
Nett inherited debt				<u>189 124</u>
4.4 Northern Province				
	R*000	R*000	R*000	
Deficits against the former Venda	164 900			
Deficits against the former Lebowa	111 800			
Pension fund contributions of the former Venda outstanding on 31 March 1995 (These contributions were paid by North- ern Province after that date)	<u>15 500</u>			
Subtotal		292 200		
<u>Less:</u>				
Transfers for those purposes made to Northern Province by the Department of Finance	122 657			
Investment in the Gazankulu Sinking Fund	24 500			
Investment in the Lebowa Sinking Fund	<u>53 010</u>			
Subtotal		<u>200 167</u>		
Nett inherited debt				<u>92 033</u>

This identification of the former homelands' outstanding debt which the affected provinces have inherited, has been accepted by all those provinces.

The Auditor-General is also in agreement with the abovementioned amounts signifying their respective nett inherited debts.

THE BILL

5. On 10 December 1997 Cabinet resolved that special legislation be introduced in Parliament with a view to granting the affected provinces relief from their inherited debt, which gave rise to the Inherited Debt Relief Bill, 1998 ("the Bill"). In brief, the Bill proposes to empower the Minister of Finance to increase State debt during the financial year ending on 31 March 1999, by borrowing an amount of R936 138 000 with a view to enabling the affected provinces to settle their inherited debts and, in the case of Mpumalanga and Northern Province (which had repaid part of their inherited debts from their own funds after 31 March 1995), compensating them for those repayments. The Bill further provides that the transfer of the money to be made available to the affected

provinces for the purpose of paying their inherited debts, will be made subject to terms and conditions determined by the Minister of Finance, and that the transferred money must be used by the affected provinces to settle their inherited debts without delay. (See clause 2 of the Bill.) Although the amount of R936,138 million is to be incorporated in the national debt portfolio, this will not result in an increase of the debt-servicing cost for the financial year ending on 31 March 1999, since provision has already been made for the additional servicing cost resulting from the national sphere of government having effectively assumed responsibility for the discharge of the inherited debts.

PROCEDURE

6. The State Law Advisers are of the opinion that the Bill should be dealt with in accordance with the procedure provided for in section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996 — “the Constitution”), inasmuch as the Bill—

- * is designed to grant certain provinces non-recurrent relief with regard to their debt burden (to be financed by increasing the national debt), which does not fall within any of the functional areas mentioned in Schedule 4 or 5 to the Constitution;
- * does not contemplate any amendment to the Constitution nor propose the imposition of any tax, levy or duty; and
- * does not provide for legislation of the nature envisaged in section 76(3)(a) to (e), (4) or (5) of the Constitution.