

REPUBLIC OF SOUTH AFRICA

**PUBLIC FINANCE MANAGEMENT
AMENDMENT BILL**

*(As presented by the Portfolio Committee on Finance (National Assembly) as a section 76
Bill pursuant to the resolution adopted by the National Assembly on 16 September 1998)*

(MINISTER OF FINANCE)

[B 27—99]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
OPENBARE FINANSIËLE
BESTUUR**

*(Soos voorgelê deur die Portefeuljekomitee oor Finansies (Nasionale Vergadering) as 'n
artikel 76-wetsontwerp ooreenkomstig die besluit op 16 September 1998 deur die Nasionale
Vergadering aangeneem)*

(MINISTER VAN FINANSIES)

[W 27—99]

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- “(b) is approved by Parliament or a provincial legislature, as may be appropriate, as part of the vote;”;
- (f) the insertion after the definition of “main division within a vote” of the following definition:
 “**‘MEC for finance’** means the member of an Executive Council of a province responsible for finance in the province;”;
- (g) the insertion after the definition of “prescribe” of the following definitions:
 “**‘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 and listed in Schedule 2 of that Act;
‘provincial government business enterprise’ means an entity which—
 (a) is a juristic person under the ownership control of a provincial executive;
 (b) has been assigned financial and operational authority to carry on a business activity;
 (c) as its principal business, provides goods or services in accordance with ordinary business principles; and
 (d) is financed fully or substantially from sources other than—
 (i) a Provincial Revenue Fund; or
 (ii) by way of a tax, levy or other statutory money;
‘provincial public entity’ means—
 (a) a provincial government business enterprise; or
 (b) a board, commission, company, corporation, fund or other entity (other than a provincial government business enterprise) which is—
 (i) established in terms of legislation or a provincial constitution;
 (ii) fully or substantially funded either from a Provincial Revenue Fund or by way of a tax, levy or other money imposed in terms of legislation; and
 (iii) accountable to a provincial legislature;
‘provincial treasury’ means a treasury established in terms of section 17;”;
- (h) the substitution for the definition of “public entity” of the following definition:
 “**‘public entity’** means a national or provincial public entity;”;
- (i) the addition at the end of paragraph (a) of the definition of “Revenue Fund” of the word “or”, and after that paragraph the following paragraph:
 “(b) a Provincial Revenue Fund mentioned in section 226 of the Constitution;”;
- (j) the addition at the end of paragraph (a) of the definition of “trading entity” of the word “or”, and after that paragraph the following paragraph:
 “(b) in the case of a provincial department, with the approval of the relevant provincial treasury acting within a prescribed framework;”;
- (k) the substitution for the definition of “treasury” of the following definition:
 “**‘treasury’** means the National Treasury or a provincial treasury as may be appropriate in the circumstances;”;
- (l) the substitution in the definition of “vote” for paragraph (b) of the following paragraph:
 “(b) is separately approved by Parliament or a provincial legislature, as may be appropriate, before it approves the relevant draft appropriation Act as such.”.

Amendment of section 3 of Act 1 of 1999

2. Section 3 of the principal Act is hereby amended by—
- (a) the substitution for paragraph (d) of subsection (1) of the following paragraph:
“(d) Parliament and the provincial legislatures, subject to subsection (2).”;
and 5
 - (b) the addition at the end of paragraph (a) of subsection (2) of the word “and”,
and after that paragraph the following paragraph:
“(b) a provincial legislature, any controlling and supervisory functions of the
National Treasury and a provincial treasury in terms of that provision are
performed by the Speaker of the provincial legislature.” 10

Amendment of section 6 of Act 1 of 1999

3. Section 6 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (2) of the following paragraph:
“(c) must monitor and assess the implementation of this Act, including any
prescribed norms and standards, in provincial departments, in [national] 15
public entities and in constitutional institutions;”.

Amendment of section 7 of Act 1 of 1999

4. Section 7 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:
“(5) A bank which has opened a bank account for a department, a public entity 20
listed in Schedule 3 or a constitutional institution, or any other institution that holds
money for a department, a public entity listed in Schedule 3 or a constitutional
institution, must promptly disclose information regarding the account when so
requested by the National Treasury or the Auditor-General, or, in the case of a
provincial department or provincial public entity, by the National Treasury, the 25
Auditor-General or the relevant provincial treasury.”.

Amendment of section 10 of Act 1 of 1999

5. Section 10 of the principal Act is hereby amended by—
- (a) the addition at the end of paragraph (a) of subsection (1) of the word “and”,
and after that paragraph the following paragraph: 30
“(b) in relation to a provincial department or provincial public entity, in
writing delegate any of the powers entrusted to the National Treasury in
terms of this Act to a provincial treasury, or request that treasury to
perform any of the duties assigned to the National Treasury in terms of
this Act, as the Minister and the relevant MEC for finance may agree.”; 35
 - (b) by the substitution in subsection (2) for the words preceding paragraph (a) of
the following words:
“(2) A delegation, instruction or request in terms of subsection (1) to the
head of a department forming part of the National Treasury, or to a provincial 40
treasury—”; 40
 - (c) by the deletion at the end of paragraph (b) of subsection (2) of the word
“and”;
 - (d) by the insertion after paragraph (b) of subsection (2) of the following
paragraph: 45
“(c) may authorise a provincial treasury, in the case of subsection (1)(b)— 45
 - (i) to sub-delegate, in writing, the delegated power to an official in that
provincial treasury, or to the holder of a specific post in that
provincial treasury, or to the accounting officer of a provincial
department, or to the accounting authority of a provincial public
entity; or 50
 - (ii) to instruct an official in that provincial treasury, or the holder of a
specific post in that provincial treasury, or the accounting officer of
a provincial department, or the accounting authority of a provincial
public entity, to perform the assigned duty; and”; and 50

- (e) by the substitution for subsection (3) of the following subsection:
 “(3) The Minister may confirm, vary or revoke any decision taken by the head of a department forming part of the National Treasury, or by a provincial treasury, as a result of a delegation, instruction or request in terms of subsection (1)(a) or (b), or by a treasury official or accounting officer or accounting authority as a result of an authorisation in terms of subsection (2)(b) or (c), subject to any rights that may have become vested as a consequence of the decision.”.

Insertion of Chapter 3 in Act 1 of 1999

6. The following Chapter is hereby inserted in the principal Act after Chapter 2:

“CHAPTER 3

PROVINCIAL TREASURIES AND PROVINCIAL REVENUE FUNDS

Part 1: Provincial treasuries

Establishment

17. (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 and other decisions of the treasury, except those decisions taken in consequence of a delegation or instruction in terms of section 20.

Functions and powers

18. (1) A provincial treasury must—
 (a) prepare the provincial budget;
 (b) exercise control over the implementation of the provincial budget;
 (c) promote and enforce transparency and effective management in respect of revenue, expenditure, assets and liabilities of provincial departments and provincial public entities; and
 (d) ensure that its fiscal policies do not materially and unreasonably prejudice national economic policies.
 (2) A provincial treasury—
 (a) must issue provincial treasury instructions not inconsistent with this Act;
 (b) must enforce this Act and any prescribed national and provincial norms and standards, including any prescribed standards of generally recognised accounting practice and uniform classification systems, in provincial departments;
 (c) must comply with the annual Division of Revenue Act, and monitor and assess the implementation in provincial public entities of that Act;
 (d) must monitor and assess the implementation in provincial public entities of national and provincial norms and standards;
 (e) may assist provincial departments and provincial public entities in building their capacity for efficient, effective and transparent financial management;
 (f) may investigate any system of financial management and internal control applied by a provincial department or a provincial public entity;
 (g) must intervene by taking appropriate steps, which may include the withholding of funds, to address a serious or persistent material breach of this Act by a provincial department or a provincial public entity;
 (h) must promptly provide any information required by the National Treasury in terms of this Act; and
 (i) may do anything further that is necessary to fulfil its responsibilities effectively.

Annual consolidated financial statements

19. (1) A provincial treasury must—

- (a) prepare consolidated financial statements, in accordance with generally recognised accounting practice, for each financial year in respect of—
 - (i) provincial departments in the province;
 - (ii) public entities under the ownership control of the provincial executive of the province ; and
 - (iii) the provincial legislature in the province; and
- (b) submit those statements to the Auditor-General within three months after the end of that financial year.

(2) The Auditor-General must audit the consolidated financial statements and submit an audit report on the statements to the provincial treasury of the province concerned within three months of receipt of the statements.

(3) The MEC for finance in a province must submit the consolidated financial statements and the audit report within one month of receiving the report from the Auditor-General, to the provincial legislature for tabling in the legislature.

(4) The consolidated financial statements must be made public when submitted to the provincial legislature.

(5) If the MEC for finance fails to submit the consolidated financial statements and the Auditor-General's audit report on those statements, to the provincial legislature within seven months after the end of the financial year to which those statements relate—

- (a) the MEC must submit to the legislature a written explanation setting out the reasons why they were not submitted; and
- (b) the Auditor-General may issue a special report on the delay.

Delegations by provincial treasuries

20. (1) The MEC for finance in a province may delegate, in writing, any of the powers entrusted or delegated to the provincial treasury in terms of this Act, to the head of the department referred to in section 17(1)(b), or instruct that head of department to perform any of the duties assigned to the provincial treasury in terms of this Act.

(2) A delegation or instruction in terms of subsection (1) to the head of the department referred to in section 17(1)(b)—

- (a) is subject to any limitations or conditions that the MEC for finance may impose;
- (b) may authorise that head—
 - (i) to sub-delegate, in writing, the delegated power to another treasury official or the holder of a specific post in that treasury, or to the accounting officer of a provincial department, or to the accounting authority of a provincial public entity in the province; or
 - (ii) to instruct another provincial treasury official or the holder of a specific post in that treasury, or the accounting officer of a provincial department, or the accounting authority of a provincial public entity in the province, to perform the assigned duty; and
- (c) does not divest the MEC for finance of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

(3) The MEC for finance may confirm, vary or revoke any decision taken by the head of the department referred to in section 17(1)(b), as a result of a delegation or instruction in terms of subsection (1), or by a treasury official or accounting officer or accounting authority as a result of an authorisation in terms of subsection (2)(b), subject to any rights that may have become vested as a consequence of the decision.

Part 2: Provincial Revenue Funds

Control of Provincial Revenue Fund

21. (1) The provincial treasury of a province is in charge of that province's Provincial Revenue Fund and must enforce compliance with the provisions of section 226 of the Constitution, namely that—

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(a) all money received by the provincial government must promptly 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 it is provided for in the Constitution or a provincial Act.

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

(3) A provincial treasury must establish appropriate and effective cash management and banking arrangements for its Provincial Revenue Fund in accordance with the framework that must be prescribed in terms of section 7.

Deposits into Provincial Revenue Funds

22. (1) All money received by a provincial government, including the province's equitable share and grants made to it in terms of the annual Division of Revenue Act, must be paid into the province's Provincial Revenue Fund, except money received by—

(a) the provincial legislature in the province;

(b) a provincial public entity in the province;

(c) the provincial government from donor agencies which in terms of legislation or the agreement with the donor, must be paid to the Reconstruction and Development Programme Fund;

(d) a provincial department in the province—
 (i) operating a trading entity, if the money is received in the ordinary course of operating the trading entity;

(ii) in trust for a specific person or category of persons or for a specific purpose;

(iii) from another department to render an agency service on behalf of that department;

(iv) in terms of the annual Division of Revenue Act, if the money is exempted by that Act from payment into the Revenue Fund; or

(v) if the money is of a kind described in Schedule 4.

(2) The exclusion in subsection (1)(b) does not apply to a provincial public entity in the province which is not listed in Schedule 3 but which, in terms of section 47, is required to be listed.

(3) Draft legislation that excludes 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.

(4) Any legislation inconsistent with subsection (1) is of no force and effect to the extent of the inconsistency.

(5) Money received by a provincial legislature or a provincial public entity listed in Schedule 3 must be paid into a bank account opened by the entity concerned.

Withdrawal of exclusions from Provincial Revenue Funds

23. (1) The National Treasury, after having consulted the relevant provincial treasury, may withdraw, from a date determined by it, any exclusion granted to a provincial department or provincial public entity in terms of section 22(1), either with regard to all money or with regard to money of a specific kind received by that department or public entity, if—

(a) the exclusion is not 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) The exclusion in terms of section 22(1) of a provincial government business enterprise which is a company and in which the relevant province is not the sole shareholder, may not be withdrawn, provided the National Treasury has given its prior

written approval to the province to participate in a company that is not wholly owned by the province.

(3) From the date on which the withdrawal of an exclusion in terms of subsection (1) 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 provincial department or provincial public entity affected by the withdrawal of the exclusion—

- (a) if a provincial Act provides for the transfer to be a direct charge; 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.

(4) The Minister must promptly inform Parliament of any withdrawal of an exclusion in terms of subsection (1).

Withdrawals and investments from Provincial Revenue Funds

24. (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;
- (b) to refund money incorrectly paid into, or which is not due to, the Provincial Revenue Fund; or
- (c) to deposit into or invest money in the National Revenue Fund.

(2) A payment in terms of subsection (1)(b) or (c) is a direct charge against a Provincial Revenue Fund if a provincial Act so provides.

(3) (a) A provincial treasury, in accordance with a prescribed framework, may invest temporarily in the Republic money in the province's Provincial Revenue Fund that is not immediately needed.

(b) When money in a Provincial Revenue Fund is invested, the investment, including interest earned, is regarded as part of that Fund.

Use of funds in emergency situations

25. (1) The MEC for finance in a province may authorise the use of funds from that province's Provincial Revenue Fund to defray expenditure of an exceptional nature which is currently not provided for and which cannot, without serious prejudice to the public interest in the province, be postponed to a future appropriation by the provincial legislature.

(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 annual provincial budget for the current financial year.

(3) An amount authorised in terms of subsection (1) is a direct charge against the Provincial Revenue Fund if a provincial Act so provides.

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

- (a) be reported to the provincial legislature and the Auditor-General within 14 days; and
- (b) be attributed to a vote.

(5) A report to a provincial legislature in terms of subsection (4)(a) must be submitted to the provincial legislature for tabling in the legislature and made public.

(6) Expenditure in terms of subsection (1) must be included either in the next provincial adjustments budget for the financial year in which the expenditure is authorised, or in other appropriation legislation tabled in the provincial legislature within 120 days of the MEC for finance in the province authorising the expenditure, whichever is the sooner.

Amendment of heading to Chapter 4 of Act 1 of 1999

8. The heading "**NATIONAL BUDGETS**" is replaced by "**NATIONAL AND PROVINCIAL BUDGETS**".

Substitution of section 26 of Act 1 of 1999

9. The following section is hereby substituted for section 26 of the principal Act:

“Annual appropriations

26. Parliament and each provincial legislature must appropriate money for each financial year for the requirements of the state and the province, respectively. ”. 5

Amendment of section 27 of Act 1 of 1999

10. Section 27 of the principal Act is hereby amended by—

- (a) the insertion in subsection (1) after paragraph (a) of the following paragraph:
 “(2) 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 national annual budget, but the Minister may approve an extension of time for the tabling of a provincial budget.”; 10
- (b) the substitution for paragraph (e) of subsection (3) of the following paragraph:
 “(e) estimates of revenue excluded in terms of section 13(1) or 22(1) from the relevant Revenue Fund for that financial year;”; 15
- (c) the substitution for paragraph (f) of subsection (3) of the following paragraph:
 “(f) estimates of all direct charges against the relevant Revenue Fund and standing appropriations for that financial year;”; and
- (d) the substitution for subsection (4) of the following subsection: 20
 “(4) When the annual budget is introduced in the National Assembly or a provincial legislature, the accounting officer for each department must submit to Parliament or the provincial legislature, as may be appropriate, measurable objectives for each main division within the department’s vote. The relevant treasury may co-ordinate these submissions and consolidate them in one document.”. 25

Amendment of section 28 of Act 1 of 1999

11. Section 28 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) The Minister and the MEC for finance in a province must annually table in the National Assembly and in that province’s provincial legislature, respectively, a multi-year budget projection of—”. 30

Amendment of section 29 of Act 1 of 1999

12. Section 29 of the principal Act is hereby amended by—

- (a) the substitution for subsection (1) of the following subsection: 35
 “(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.”; 40
- (b) the substitution for subsection (3) of the following subsection:
 “(3) The funds provided for in subsection (1) are not additional to funds appropriated for the relevant financial year, and any funds withdrawn in terms of that subsection must be regarded as forming part of the funds appropriated in the relevant annual budget for that financial year.”; and 45
- (c) the addition after subsection (3) of the following subsection:
 “(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 Revenue Fund.”.

Insertion of section 31 in Act 1 of 1999

13. The following section is hereby inserted in the principal Act after section 30:

“Provincial adjustments budgets

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| <p>31. (1) The MEC for finance in a province may table an adjustments budget in the provincial legislature, subject to subsection (3).</p> <p>(2) An adjustments budget of a province may only provide for—</p> <p>(a) the appropriation of funds that have become available to the province;</p> <p>(b) unforeseeable and unavoidable expenditure recommended by the provincial Executive Council of the province within a framework determined by the Minister;</p> <p>(c) any expenditure in terms of section 25;</p> <p>(d) money to be appropriated for expenditure already announced by the MEC for finance during the tabling of the annual budget;</p> <p>(e) the shifting of funds between and within votes or to follow the transfer of functions in terms of section 42;</p> <p>(f) the utilisation of savings under a main division within a vote for the defrayment of excess expenditure under another main division within the same vote in terms of section 43; and</p> <p>(g) the roll-over of unspent funds from the preceding financial year.</p> <p>(3) The Minister may determine the time when an adjustments budget may be tabled in a provincial legislature, as well as the format for such budgets.”.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> |
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Amendment of section 32 of Act 1 of 1999

14. Section 32 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection: 25

“(2) After the end of a prescribed period, but at least quarterly, every provincial treasury must submit to the National Treasury a statement of revenue and expenditure with regard to the Revenue Fund for which that treasury is responsible, for publication in the national Government Gazette within 30 days after the end of each prescribed period.” 30

Amendment of section 33 of Act 1 of 1999

15. Section 33 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“The relevant treasury—” 35

Substitution of section 34 of Act 1 of 1999

16. The following section is hereby substituted for section 34 of the principal Act:

“Unauthorised expenditure

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| <p>34. (1) Unauthorised expenditure does not become a charge against a Revenue Fund except when—</p> <p>(a) <u>the expenditure is an overspending of a vote and Parliament or a provincial legislature, as may be appropriate, approves, as a direct</u></p> | <p>40</p> |
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- 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. 5
- (2) If Parliament or a provincial legislature does not approve in terms of subsection (1)(a) an additional amount for the amount of any overspending, that amount becomes a charge against the funds allocated for the next or future financial years under the relevant vote.”.

Insertion of section 35 in Act 1 of 1999 10

17. The following section is hereby inserted in the principal Act after section 34:

“Unfunded mandates

35. Draft national legislation that assigns an additional function or power to, or imposes any other obligation on, a provincial government, must, in a memorandum that must be introduced in Parliament with that legislation, give a projection of the financial implications of that function, power or obligation to the province.”. 15

Amendment of section 36 of Act 1 of 1999

18. Section 36 of the principal Act is hereby amended by—
- (a) the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 20
- “(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—”; and
- (b) the substitution for subsection (4) of the following paragraph: 25
- “(4) The relevant treasury may at any time withdraw in writing an approval or instruction in terms of subsection (3).”.

Amendment of section 38 of Act 1 of 1999

19. Section 38 of the principal Act is hereby amended by the substitution for paragraph (g) of subsection (1) of the following paragraph: 30
- “(g) on discovery of any unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods or services, also to the relevant tender board;”.

Amendment of section 39 of Act 1 of 1999 35

20. Section 39 of the principal Act is hereby amended by—
- (a) the substitution in paragraph (b) of subsection (2) for the words preceding subparagraph (i) of the following words: 40
- “(b) report to the executive authority and the relevant treasury any impending—”; and
- (b) the substitution for paragraph (c) of subsection (2) of the following paragraph: 40
- “(c) comply with any remedial measures imposed by the relevant treasury in terms of this Act to prevent overspending of the vote or a main division within the vote.”.

Amendment of section 40 of Act 1 of 1999

21. Section 40 of the principal Act is hereby amended by—
- (a) the substitution of subparagraph (ii) of subsection (1)(c) of the following subparagraph:
 - “(ii) the relevant treasury to enable that treasury to prepare consolidated financial statements in terms of section 8 or 19;”;
 - (b) the substitution in paragraph (d) of subsection (1) for the words preceding subparagraph (i) of the following words:
 - “(d) must submit within five months of the end of a financial year to the relevant treasury and, in the case of a department or trading entity, also to the executive authority responsible for that department or trading entity—”;
 - (c) the substitution for paragraph (f) of subsection (1) of the following paragraph:
 - “(f) is responsible for the submission by the department or constitutional institution of all reports, returns, notices and other information to Parliament, the relevant provincial legislature, an executive authority, the relevant treasury or the Auditor-General, as may be required by this Act.”;
 - (d) the substitution for paragraph (a) of subsection (4) of the following paragraph:
 - “(a) each year before the beginning of a financial year provide the relevant treasury in the prescribed format with a breakdown per month of the anticipated revenue and expenditure of that department for that financial year;”;
 - (e) the substitution in paragraph (c) of subsection (4) for the words preceding subparagraph (i) of the following words:
 - “(c) within 15 days of the end of each month submit to the relevant treasury and the executive authority responsible for that department—”.

Substitution of section 41 of Act 1 of 1999

22. The following section is hereby substituted for section 41 of the principal Act:

“Information to be submitted by accounting officers” 30

41. An accounting officer for a department, trading entity or constitutional institution must submit to the relevant treasury or the Auditor-General, such information, returns, documents, explanations and motivations as may be prescribed or as the relevant treasury or the Auditor-General may require.”. 35

Amendment of section 42 of Act 1 of 1999

23. Section 42 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The accounting officer for the transferring department must file a copy of the signed inventory with the relevant treasury and the Auditor-General within 14 days of the transfer.”. 40

Amendment of section 43 of Act 1 of 1999

24. Section 43 of the principal Act is hereby amended by—

- (a) the substitution for subsection (1) of the following subsection:
 - “(1) An accounting officer for a department may utilise a saving in the amount appropriated under a main division within a vote towards the defrayment of excess expenditure under another main division within the same vote, unless the relevant treasury directs otherwise.”;
- (b) the substitution for subsection (3) of the following subsection:
 - “(3) An accounting officer must within seven days submit a report containing the prescribed particulars concerning the utilisation of a saving in terms of subsection (1), to the executive authority responsible for the department and to the relevant treasury.”; and

- (c) the substitution for subsection (5) of the following subsection:
 “(5) A utilisation of a saving in terms of subsection (1) is a direct charge against the relevant Revenue Fund provided that, in the case of a province, that province enacts such utilisation as a direct charge.”.

Amendment of section 44 of Act 1 of 1999 5

25. Section 44 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:
 “(a) is subject to any limitations and conditions prescribed in terms of this Act or as the relevant treasury may impose;”.

Amendment of section 47 of Act 1 of 1999 10

26. Section 47 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (4) of the following paragraph:
 “(b) any public institution which functions outside the sphere of national or provincial government ; and”.

Amendment of section 48 of Act 1 of 1999 15

27. Section 48 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
 “(1) The Minister may by notice in the national *Government Gazette* classify public entities listed in Schedule 3 in accordance with the relevant definitions set out in section 1, as— 20
 (a) national government business enterprises; **[and]**
 (b) provincial government business enterprises;
[(b)](c) national public entities; and
 (d) provincial public entities.”.

Amendment of section 49 of Act 1 of 1999 25

28. Section 49 of the principal Act is hereby amended by—
 (a) the substitution for subsection (3) of the following subsection:
 “(3) The relevant treasury, in exceptional circumstances, may approve or instruct that another functionary of a public entity must be the accounting authority for that public entity.”; and 30
 (b) the substitution for subsection (4) of the following subsection:
 “(4) The relevant treasury may at any time withdraw an approval or instruction in terms of subsection (3).”.

Amendment of section 51 of Act 1 of 1999

29. Section 51 of the principal Act is hereby amended by the substitution for paragraph (f) of subsection (1) of the following paragraph: 35
 “(f) is responsible for the submission by the public entity of all reports, returns, notices and other information to Parliament or the relevant provincial legislature and to the relevant executive authority or treasury, as may be required by this Act;”.

Amendment of section 52 of Act 1 of 1999

30. Section 52 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:
 “52. The accounting authority for a public entity listed in Schedule 2 or a government business enterprise listed in Schedule 3 must submit to the accounting officer for a department designated by the executive authority responsible for that public entity or government business enterprise, and to the relevant treasury, at least one month, or another period agreed with the National Treasury, before the start of its financial year—”.

Amendment of section 54 of Act 1 of 1999

31. Section 54 of the principal Act is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:

“(1) The accounting authority for a public entity must submit to the relevant treasury or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the relevant treasury or the Auditor-General may require.”; and

(b) the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction.”.

Amendment of section 55 of Act 1 of 1999

32. Section 55 of the principal Act is hereby amended by—

(a) the substitution for subparagraph (ii) of subsection (1)(c) of the following subparagraph:

“(ii) if it is a business enterprise or other public entity under the ownership control of the national or a provincial government, to the relevant treasury; and”;

(b) the substitution in paragraph (d) of subsection (1) for the words preceding subparagraph (i) of the following words:

“(d) must submit within five months of the end of a financial year to the relevant treasury, to the executive authority responsible for that public entity and, if the Auditor-General did not perform the audit of the financial statements, to the Auditor-General—”;

(c) the substitution for subsection (3) of the following subsection:

“(3) An accounting authority must submit the report and statements referred to in subsection (1)(d), for tabling in Parliament or the provincial legislature, to the relevant executive authority through the accounting officer of a department designated by the executive authority.”; and

(d) the substitution for subsection (4) of the following subsection:

“(4) The relevant treasury may direct that, instead of a separate report, the audited financial statements of a Schedule 3 public entity which is not a government business enterprise must be incorporated in those of a department designated by [the] that treasury.”.

Amendment of section 62 of Act 1 of 1999

33. Section 62 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The executive authority responsible for a public entity in respect of which the Auditor-General has issued a special report in terms of subsection (1) or (2), must promptly table the report in the National Assembly or the relevant provincial legislature, as may be appropriate.”.

Amendment of section 63 of Act 1 of 1999

34. Section 63 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The executive authority responsible for a public entity under the ownership control of the national or a provincial executive must exercise that executive’s ownership control powers to ensure that that public entity complies with this Act and the financial policies of that executive.”.

Amendment of section 64 of Act 1 of 1999

35. Section 64 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

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

Amendment of section 65 of Act 1 of 1999

36. Section 65 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) The executive authority responsible for a department or public entity must table in the National Assembly or a provincial legislature, as may be appropriate—”.

Amendment of section 66 of Act 1 of 1999

37. Section 66 of the principal Act is hereby amended by—

(a) the addition at the end of paragraph (b) of subsection (1) of the word “and”, and after that paragraph the following paragraph:

“(c) in the case of loans by a province or a provincial government business enterprise under the ownership control of a provincial executive, within the limits as set in terms of the Borrowing Powers of Provincial Governments Act, 1996 (Act No. 48 of 1996).”;

(b) the substitution for subsection (2) of the following subsection:

“(2) **[Only the following persons may]** A government may only through the following persons borrow money, or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind **[the]** a Revenue Fund to any future financial commitment:

(a) **[Transactions that bind or may bind]** The National Revenue Fund: the Minister or, in the case of the issue of a guarantee, indemnity or security, the responsible Cabinet member acting with the concurrence of the Minister in terms of section 70.

(b) A Provincial Revenue Fund: the MEC responsible for finance in the province, acting in accordance with the Borrowing Powers of Provincial Governments Act, 1996.”;

(c) the addition in subsection (3) of the following paragraph:

“(d) A provincial government business enterprise listed in Schedule 3 and authorised by notice in the national *Government Gazette* by the Minister: the MEC responsible for finance in the province, acting with the concurrence of the Minister, subject to any conditions that the Minister may impose.”;

(d) the substitution for subsection (4) of the following subsection:

“(4) Constitutional institutions and provincial public entities not mentioned in subsection (3)(d) may not borrow money, nor issue a guarantee, indemnity or security, nor enter into any other transaction that binds or may bind the institution or entity to any future financial commitment.”; and

(e) the substitution for subsection (5) of the following subsection:

“(5) Despite subsection (4), the Minister may in writing permit a public entity mentioned in subsection (3) (c) or (d) or a constitutional institution to borrow money for bridging purposes up to a prescribed limit, including a temporary bank overdraft, subject to such conditions as the Minister may impose.”.

Insertion of section 67 of Act 1 of 1999

38. The following section is hereby inserted in the principal Act after section 66:

“No provincial commitments in foreign currency”

67. A provincial government, including any provincial public entity, may not borrow money or issue a guarantee, indemnity or security or enter into any other transaction that binds itself to any future financial commitment, denominated in a foreign currency or concluded on a foreign financial market.”. 5

Substitution of section 69 of Act 1 of 1999

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39. The following section is hereby substituted for section 69 of the principal Act:

“Regulations on borrowing by public entities”

69. The Minister may regulate by regulation in terms of section 76 the borrowing of money by or for or on behalf of public entities referred to in section 66(3)(b), **[and]** (c) and (d).” 15

Amendment of section 77 of Act 1 of 1999

40. Section 77 of the principal Act is hereby amended—

(a) by the substitution for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) the majority may not be persons in the employ of the department, except with the approval of the relevant treasury; and” 20

(b) by the substitution for paragraph (c) of the following paragraph:

“(c) may be established for two or more departments or institutions if the relevant treasury **[consider]** considers it to be more economical.”.

Amendment of section 80 of Act 1 of 1999

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41. Section 80 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister, by notice in the national Government Gazette, must determine—

(a) a uniform interest rate applicable to loans granted out of **[the]** a Revenue Fund; and 30

(b) a uniform interest rate applicable to all other debts which must be paid into **[the]** a Revenue Fund.”.

Substitution of section 82 of Act 1 of 1999

42. The following section is hereby substituted for section 82 of the principal Act: 35

“Financial misconduct by treasury officials”

82. An official of **[the]** a treasury to whom a power or duty is assigned in terms of section 10 or 20 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.”. 40

Amendment of section 85 of Act 1 of 1999

43. Section 85 of the principal Act is hereby amended by—

- (a) the substitution in paragraph (a) of subsection (1) for the words preceding subparagraph (i) of the following words:
 “(a) the manner, form and circumstances in which allegations and disciplinary and criminal charges of financial misconduct must be reported to the National Treasury, the relevant provincial treasury and the Auditor-General, including—”; 5
- (b) the substitution for paragraph (c) of subsection (1) of the following paragraph:
 “(c) the circumstances in which the National Treasury or a provincial treasury may direct that disciplinary steps be taken or criminal charges be laid against a person for financial misconduct;”; and 10
- (c) the substitution for paragraph (e) of subsection (1) of the following paragraph:
 “(e) the circumstances in which the findings of a disciplinary board and any sanctions imposed by the board must be reported to the National Treasury, the relevant provincial treasury and the Auditor-General; and”. 15

Amendment of section 89 of Act 1 of 1999

44. Section 89 of the principal Act is hereby amended by the substitution for subparagraph (v) of subsection (1)(a) of the following subparagraph: 20
 “(v) Parliament and the provincial legislatures;”.

Amendment of Schedule 3 to Act 1 of 1999

45. Schedule 3 to the principal Act is hereby amended by the addition of the following Parts:

“Part C: Provincial Public Entities” 25**Eastern Cape:**

1. Centre for Investment and Marketing in the Eastern Cape
2. Eastern Cape Agricultural Bank
3. Eastern Cape Appropriate Technology Unit
4. Eastern Cape Arts Council
5. Eastern Cape Consumer Affairs Court
6. Eastern Cape Development Corporation
7. Eastern Cape Development Tribunal
8. Eastern Cape Gambling and Betting Board
9. Eastern Cape Liquor Board
10. Eastern Cape Local Road Transport Board
11. Eastern Cape Museums
12. Eastern Cape Provincial Housing Board
13. Eastern Cape Provincially Aided Libraries
14. Eastern Cape Regional Authorities
15. Eastern Cape Socio-Economic Consultative Council
16. Eastern Cape Tender Board
17. Eastern Cape Tourism Board
18. Eastern Cape Township Board

Free State:

1. Free State Mangaung Nursing College
2. Free State Rural Foundation
3. Free State Rural Strategy Unit
4. Free State Liquor Board
5. Free State Gambling and Gaming Board
6. Free State Tender Board
7. Free State Tourism Board
8. Free State Youth Commission

Gauteng:

1. Gauteng Economic Development Agency
2. Gauteng Gambling Board
3. Gauteng Tourism Authority
4. Gauteng Consumer Affairs Court
5. Gauteng Development Tribunal
6. Gauteng Education and Training Board
7. Gauteng Municipal Demarcation Board
8. Gauteng Provincial Housing Board
9. Gauteng Services Appeal Board
10. Gauteng Townships Board

KwaZulu-Natal:

1. KwaZulu-Natal Appeals Tribunal
2. KwaZulu-Natal Development & Services Board
3. KwaZulu-Natal Development Tribunal
4. KwaZulu-Natal Gambling Board
5. KwaZulu-Natal House of Traditional Leaders
6. KwaZulu-Natal Monuments Council
7. Natal Sharks Board
8. KwaZulu-Natal Private Townships Board
9. KwaZulu-Natal Town and Regional Planning Commission
10. KwaZulu-Natal Townships Board
11. KwaZulu-Natal Provincial Peace Committee
12. KwaZulu-Natal Tender Board
13. KwaZulu-Natal Tourism Authority
14. KwaZulu-Natal Liquor Board
15. KwaZulu-Natal Conservation Services
16. KwaZulu-Natal Local Roads Transportation Board
17. KwaZulu-Natal Marketing Initiative
18. KwaZulu-Natal Economic Council
19. KwaZulu-Natal Taxi Task Team
20. KwaZulu-Natal International Airport Development Initiative
21. S.A. Life Saving
22. Natal Trust Fund
23. Natal Arts Trust

Mpumalanga:

1. Mpumalanga Gambling Board
2. Mpumalanga Housing Board
3. Mpumalanga Parks Board
4. Mpumalanga Tender Board

Northern Cape:

1. Northern Cape Economic Development Unit
2. Northern Cape Gambling Board
3. Northern Cape Housing Board
4. Northern Cape Liquor Board
5. Northern Cape Local Transportation Board
6. Northern Cape Provincial Tender Board
7. Northern Cape Tourism Authority
8. Northern Cape Youth Commission

Northern Province:

1. Northern Province Agricultural and Rural Development Corporation
2. Northern Province Appeal Tribunals
3. Northern Province Development Tribunals
4. Northern Province Panel of Mediators

5. Northern Province Planning Commission	
6. Northern Province Provincial Tender Board	
7. Northern Province Tourism Board	
8. Northern Province Gaming Board	
9. Northern Province Liquor Board	5
10. Northern Province Local Business Centres	
11. Northern Province Housing Board	
12. Northern Province Investment Initiative	
13. Gauteng International Airport	
North West:	10
1. NW Agricultural Services Corporation	
2. NW Arts Council	
3. NW Communication Service	
4. NW Mmabana Cultural Foundation	
5. NW Ombudsman	15
6. NW Gambling Board	
7. NW Tender Board	
8. NW Parks and Tourism Board	
9. NW Housing Corporation	
Western Cape:	20
1. WC Investment and Trade Promotion Agency	
2. WC Provincial Tender Board	
3. WC Tourism Board	
4. WC Gambling and Racing Board	
5. Any subsidiary or entity under the ownership control of the above public entities	25
6. WC Housing Development Board	
7. WC Liquor Board	
8. WC Provincial Development Council	
Part D: Provincial Government Business Enterprises	
Eastern Cape:	30
1. Algoa Bus Company	
2. Mayibuye Transport Corporation	
3. Free State Agri-Eco (Pty) Ltd	
4. Free State Development Corporation	
5. KwaZulu Finance & Investment Corporation	35
6. KwaZulu Mjindi Farming (Pty) Ltd	
7. Mpumalanga Development Corporation	
8. Mpumalanga Finance Corporation	
9. NW Development Corporation	
10. Natal Trust Farms (Pty) Ltd	40
11. Northern Province Development Corporation	
12. <u>Any subsidiary or entity under the ownership control of the above public entities</u>	

Amendment of Schedule 4 to Act 1 of 1999

46. Schedule 4 to the principal Act is hereby amended by the substitution for the heading of the following heading:

“SCHEDULE 4**EXCLUSIONS FROM REVENUE FUNDS**

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(In terms of section [13(1)(g)] 13(1) or 22(1)”.

Substitution of long title of Act 1 of 1999

47. The following long title is hereby substituted for the long title of the principal Act:
 “To regulate financial management in the national government and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of **[that government is]** those governments are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in **[that government]** those governments; and to provide for matters connected therewith.

Amendment of Arrangements of Sections in Act 1 of 1999

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48. The Arrangements of Sections after the long title in the principal Act is hereby amended by—

- (a) the insertion after the arrangement of sections in Chapter 2 of the following arrangement:

“CHAPTER 3

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PROVINCIAL TREASURIES AND PROVINCIAL REVENUE FUNDS*Part 1: Provincial treasuries*

17. Establishment
 18. Functions and powers
 19. Annual consolidated financial statements
 20. Delegations by provincial treasuries

25

Part 2: Provincial Revenue Funds

21. Control of Provincial Revenue Fund
 22. Deposits by provincial departments into Provincial Revenue Fund
 23. Withdrawal of exclusions from Provincial Revenue Funds
 24. Withdrawals from Provincial Revenue Funds
 25. Use of funds in emergency situations”;

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- (b) the insertion after “30. National adjustments budget” of the following:

“31. Provincial adjustments budgets”;

35

- (c) the insertion after “34. Unauthorised expenditure” of the following:

“35. Unfunded mandates”; and

- (d) the insertion after “66. Restrictions on borrowing, guarantees and other commitments” of the following:

“67. No provincial commitments in foreign currency” .

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Short title and commencement

49. This Act is called the Public Finance Management Amendment Act, 1999, and its provisions take effect on the date on which the provisions of the principal Act amended by the provisions of this Act, take effect.

MEMORANDUM ON THE OBJECTS OF THE PUBLIC FINANCE MANAGEMENT AMENDMENT BILL, 1999

1. INTRODUCTION

Together with this Amendment Bill, the Public Finance Management Act, 1999, give 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.

Due to a constitutional technicality, the original Bill had to be split into two bills to comply with the constitutionally determined procedures for the passage of bills which affect the national and provincial governments. The first Bill was passed as a section 75 Bill as it only affects the national government, whilst this Bill is a section 76 Bill as it affects provinces. This Bill now extends the provisions of the Public Financial Management Act (Act 1 of 1999) to the provincial sphere of government. This Bill therefore establishes provincial treasuries and ensures effective oversight over provincial revenue funds. It extends the provisions on the responsibilities of national accounting officers and accounting authorities to the provincial authorities. It also regulates the operational procedures for borrowing, guarantees as well as procurement.

