

PROVINCE OF WESTERN CAPE

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**WESTERN CAPE PARLIAMENTARY  
SERVICE AND FINANCE  
MANAGEMENT BILL**

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*(As amended by the Rules Committee)*

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(SPEAKER)

[B 9B—2009]

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PROVINSIE WES-KAAP

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**WES-KAAPSE WETSONTWERP OP  
PARLEMENTÊRE DIENS EN  
FINANSIËLE BESTUUR**

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*(Soos gewysig deur die Reëlskomitee)*

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(SPEAKER)

[W 9B—2009]

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IPHONDO LENTSHONA KOLONI

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**UMTHETHO OSAYILWAYO  
WENKONZO YEPALAMENTE  
NOLAWULO LWEZEMALI  
WENTSHONA KOLONI**

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*(Njengoko ilungisiwe yiKomiti yeMithetho)*

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(USOMLOMO)

[B 9B—2009]

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## GENERAL EXPLANATORY NOTE:

- [                    ]      Words in bold type in square brackets indicate omissions.  
                          Words underlined with a solid line indicate insertions.
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# BILL

**To provide for the establishment of a Parliamentary Service and a Governance Board for the Western Cape Provincial Parliament; to regulate the financial management of the Western Cape Provincial Parliament; and to provide for matters connected therewith.**

## PREAMBLE

**RECOGNISING** that the Provincial Parliament is governed by the democratic values and principles enshrined within both the Constitution of the Republic of South Africa, 1996, and the Constitution of the Western Cape, 1997;

**AND** in order to—

- ensure effective governance of the Provincial Parliament;
- promote and maintain a high standard of professional ethics in the financial management of the Provincial Parliament;
- promote the efficient, economic and effective use of resources allocated to the Provincial Parliament; and
- ensure the transparent, accountable and sound management of the revenue, expenditure, assets and liabilities of the Provincial Parliament,

**B**E IT THEREFORE ENACTED by the Provincial Parliament of the Western Cape, as follows:—

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### CHAPTER 1 DEFINITIONS

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#### Definitions

1. In this Act, unless the context indicates otherwise—
  - “**Accounting Officer**” means the Secretary;
  - “**annual report**” means the annual report referred to in section 23(1)(d)(i);

- “approved budget”** means the total amount of funds that the Provincial Parliament has—
- (a) appropriated from the Provincial Revenue Fund for the Provincial Parliament in a vote in terms of a provincial appropriation Act; and
  - (b) approved from the Provincial Parliament’s own funds in terms of section 31(2)(c); 5
- “Committee”** means the committee of the Provincial Parliament established in terms of section 9;
- “financial year”** means the period commencing on the first day of April in a year up to the thirty first day of March in the following year, both days inclusive; 10
- “fruitless and wasteful expenditure”** means expenditure that was made in vain and would have been avoided had reasonable care been exercised;
- “Governance Board”** or **“Board”** means the Western Cape Provincial Parliament Governance Board established by section 3;
- “irregular expenditure”** means expenditure, other than unauthorised expenditure, incurred in contravention of, or that is not in accordance with, a requirement of this Act or any other applicable legislation; 15
- “main division”** means one of the main segments into which the Provincial Parliament’s approved budget is divided and which specifies the total amount which is appropriated and approved for the items under that segment; 20
- “Member”** means a member of the Provincial Parliament;
- “Minister”** means the Provincial Minister responsible for financial matters in the province;
- “month”** means the period that extends from the first day in a month up to and including the day that precedes the day which corresponds numerically to the first mentioned day in the following month; 25
- “National Treasury”** means the treasury established by section 5 of the PFMA;
- “official”** means an employee of the Parliamentary Service;
- “overspending”**—
- (a) in relation to the approved budget of the Provincial Parliament, means causing expenditure to exceed the amount appropriated and approved for the budget; or
  - (b) in relation to a main division, means causing expenditure to exceed the amount appropriated or approved for that main division, subject to section 35; 30 35
- “Parliamentary Service”** means the Western Cape Provincial Parliamentary Service referred to in section 2, including the Secretary;
- “Parliamentary Treasurer”** means the Parliamentary Treasurer referred to in section 15;
- “performance plan”** means the annual performance plan referred to in section 30; 40
- “PFMA”** means the Public Finance Management Act, 1999 (Act 1 of 1999);
- “political party”** means a political party represented in the Provincial Parliament;
- “prescribe”** means prescribe by regulation;
- “province”** means the Province of the Western Cape;
- “provincial annual budget”** means the provincial annual budget referred to in section 27(2) of the PFMA; 45
- “Provincial Parliament”** means the Western Cape Provincial Parliament;
- “Provincial Treasury”** means the treasury established for the province by section 17 of the PFMA;
- “quarter”** means any of the following periods in a financial year: 50
- (a) 1 April to 30 June;
  - (b) 1 July to 30 September;
  - (c) 1 October to 31 December; or
  - (d) 1 January to 31 March;
- “regulations”** means regulations made by the Parliamentary Treasurer under section 40; 55
- “Secretary”** means the Secretary to the Provincial Parliament appointed in terms of section 7(1) or the person acting as Secretary in terms of section 8;
- “Speaker”** means the Speaker of the Provincial Parliament;
- “standards of generally recognised accounting practice”** means an accounting practice complying with the standards issued by the national Minister responsible for financial matters on the advice of the Accounting Standards Board; 60
- “strategic plan”** means the strategic plan referred to in section 30;

“**this Act**” includes the regulations and Schedule to the Act;

“**unauthorised expenditure**” means—

- (a) overspending of the approved budget or a main division; or
- (b) any expenditure from the approved budget or a main division for a purpose unrelated to the approved budget or main division, subject to section 35. 5

## **CHAPTER 2**

### **GOVERNANCE ARRANGEMENTS**

#### **Establishment of Parliamentary Service**

**2.** (1) There is hereby established a Parliamentary Service to be known as the Western Cape Provincial Parliamentary Service. 10

(2) The Parliamentary Service provides administrative and support services to the Members to enable them to perform their functions.

#### **Establishment of Governance Board**

**3.** (1) There is hereby established a Board to be known as the Western Cape Provincial Parliament Governance Board. 15

(2) The Board is the executive authority responsible for controlling the revenue, expenditure, assets and liabilities of the Provincial Parliament.

(3) In respect of the performance of the functions of the Board, the members of the Board are collectively accountable to the Provincial Parliament. 20

#### **Composition of Governance Board**

**4.** (1) The Governance Board consists of—

- (a) the Speaker;
- (b) the Chief Whip of the Majority Party;
- (c) a Member nominated by the Majority Party; and 25
- (d) two Members of opposition parties appointed by resolution of the Provincial Parliament.

(2) The Speaker is the chairperson of the Board.

(3) If the Speaker is absent from a meeting of the Board, the members of the Board who are present elects one of their number to preside at that meeting. 30

(4) The Speaker must between consecutive meetings of the Board perform all the functions of the Board.

(5) The Speaker must refer all decisions taken by virtue of subsection (4) to the Board for ratification.

#### **Procedure of Governance Board** 35

**5.** (1) The Board may determine its proceedings and performs its functions in the manner it considers appropriate, in accordance with good governance principles.

(2) The Board must meet at least once per quarter.

(3) At a meeting of the Board a quorum consists of at least three members.

(4) The Board must operate in a manner that strives to reach consensus, but if consensus cannot be reached, decisions are taken by majority vote. 40

(5) When there is an equality of votes, the Speaker or the other Member presiding at that meeting, as the case may be, must cast a deciding vote.

(6) The Secretary provides administrative support to the Board.

#### **Functions of Governance Board** 45

**6.** The Board must—

- (a) determine the services to be provided by the Parliamentary Service and establish the necessary structures for the provision of those services;
- (b) determine the size and organisation of the Parliamentary Service;
- (c) monitor the provision and administration of services by the Parliamentary Service; 50

- (d) determine the remuneration and other conditions of service of officials;
- (e) represent the Provincial Parliament in any discussions with the Minister on any aspect of the Provincial Parliament's budget or adjustments estimate;
- (f) issue directives in accordance with section 40; and
- (g) perform the other functions assigned to it by this Act or by resolution of the Provincial Parliament. 5

### **Secretary to Provincial Parliament**

7. (1) The Provincial Parliament must by resolution appoint a person as Secretary to the Provincial Parliament—
- (a) on the recommendation of the Governance Board; and 10
  - (b) on a fixed-term contract for a period expiring not later than the day before the first day of polling for the next Provincial Parliament.
- (2) The Governance Board and the Secretary must conclude a written performance agreement within three months after the Secretary is appointed and thereafter within two weeks after the start of each financial year. 15
- (3) The performance agreement must—
- (a) specify performance standards linked to the objectives and targets of the performance plan for the financial year concerned;
  - (b) specify the responsibilities of the Secretary as the Accounting Officer;
  - (c) provide for an annual assessment of the Secretary's performance by the Governance Board, having regard to, amongst others, the audit report on the annual financial statements of the Provincial Parliament; and 20
  - (d) specify the consequences of substandard performance.

### **Acting Secretary**

8. (1) If the post of Secretary is vacant, or if the Secretary is unable to perform the functions of the post, the Governance Board must designate an official in writing as acting Secretary. 25
- (2) When an election of the Provincial Parliament is to be held, the Governance Board must, before the first day of polling, designate an official to act as Secretary from that day until the next person appointed as Secretary assumes office. 30

### **Parliamentary Oversight Committee**

9. (1) The Provincial Parliament must establish a parliamentary committee to be known as the Parliamentary Oversight Committee to maintain oversight of the management of the Provincial Parliament.
- (2) A member of the Governance Board may not be a member of the Committee. 35

### **Audit Committee**

10. (1) The Governance Board must establish an audit committee.
- (2) The Board may decide to share an audit committee with one or more public sector institutions.
- (3) The audit committee, except in the case of a shared committee referred to in subsection (2), must consist of at least three persons, of whom— 40
- (a) the majority may not be officials or Members; and
  - (b) the chairperson may not be an official or a Member.
- (4) The audit committee must meet at least four times a year.

## **CHAPTER 3 45**

### **FINANCIAL MANAGEMENT**

#### **Financial responsibilities of Governance Board**

11. The Governance Board must ensure that its functions as well as the functions of the Accounting Officer and other officials are performed within the limits of the approved budget and the respective main divisions. 50

### **Executive directive with financial implications**

- 12.** (1) A directive by the Governance Board that has financial implications must—
- (a) be in writing, signed by the chairperson of the Board; and
  - (b) be addressed to the Accounting Officer.
- (2) If implementation of a directive is likely to result in unauthorised expenditure, the Accounting Officer—
- (a) may not proceed with the implementation of the directive; and
  - (b) must inform the Governance Board in writing of the likelihood that the directive may lead to unauthorised expenditure.
- (3) If the Accounting Officer proceeds to implement a directive contemplated in subsection (2) without receiving a further instruction from the Governance Board in terms of subsection (5), and it results in unauthorised expenditure, the Accounting Officer is responsible for that unauthorised expenditure.
- (4) An official may not implement a directive by the Governance Board that may have financial implications unless the Accounting Officer issues a written instruction to proceed with implementation.
- (5) The Governance Board may instruct the Accounting Officer to proceed with the implementation of a directive contemplated in subsection (2) only if it is to provide for—
- (a) expenditure of an exceptional nature which is currently not provided for in the approved budget and which cannot, without serious prejudice to the interests of the Provincial Parliament, be postponed to a future appropriation or approval of funds; or
  - (b) unforeseeable and unavoidable expenditure approved by the Provincial Parliament.
- (6) An instruction referred to in subsection (5)—
- (a) must be in writing;
  - (b) must specify the reasons for the instruction; and
  - (c) may not be given if the combined expenditure provided for in any such instructions exceed two percent of the total amount appropriated in terms of section 32(1) in the provincial annual budget for the current financial year.
- (7) The Board must without delay table a copy of the instruction in the Provincial Parliament for prompt referral to the Committee for consideration.
- (8) The Accounting Officer must file a copy of the instruction with the Auditor-General within 14 days after receiving the instruction.

### **Tabling of annual report, strategic plan, performance plan and budget**

- 13.** (1) The Governance Board must—
- (a) table in the Provincial Parliament the annual report, including the audited financial statements and audit report on those statements, within one month after the Accounting Officer received the audit report; and
  - (b) ensure that the financial statements are made accessible to the public.
- (2) The Governance Board must table in the Provincial Parliament—
- (a) the strategic plan approved by the Board in terms of section 30(1); and
  - (b) the performance plan approved by the Board in terms of section 30(2).
- (3) If the Governance Board fails to table the annual report in accordance with subsection (1)(a) within six months after the end of the financial year to which it relates—
- (a) the Governance Board must table a report on the reasons for the failure in the Provincial Parliament; and
  - (b) the Auditor-General may issue a special report on the delay.

### **Support for Members and political parties**

- 14.** (1) The Governance Board must issue directives not inconsistent with this Act or the rules and orders contemplated in section 23(3)(h) of the Constitution of the Western Cape, 1997, regarding the allocation and use of funds provided by the Provincial Parliament to political parties and Members.
- (2) Before issuing directives, the Board must consult with the political parties.
  - (3) The directives must—
    - (a) regulate the allocation of funds in an equitable manner;



- (b) specify the purposes for which funds may be used;
  - (c) provide for the prompt payment of funds into a bank account;
  - (d) stipulate the responsibilities of Members and political parties to account for allocated funds;
  - (e) establish a procedure according to which Members and political parties account for the use of funds; 5
  - (f) prescribe a format for financial statements for accounting for the use of funds, which format must comply with the standards of generally recognised accounting practice;
  - (g) require political parties to submit audited financial statements to the Accounting Officer in a format complying with the standards of generally recognised accounting practice; 10
  - (h) provide for the recovery of funds spent irregularly; and
  - (i) establish a dispute-resolution procedure.
- (4) The directives must authorise the Accounting Officer to withhold funds allocated to a political party or Member— 15
- (a) until the Accounting Officer receives—
    - (i) adequate information concerning the ability of the political party or Member to manage and account for the funds;
    - (ii) any outstanding audit reports on the use of parliamentary funds by the political party or Member; 20
    - (iii) any other information reasonably necessary to confirm that the political party or Member is entitled to the funds; and
  - (b) in the case of a qualified audit report in respect of such funding, until adequate measures are put in place to rectify the qualification. 25

### **Parliamentary Treasurer**

15. There is hereby established a Parliamentary Treasurer, with the Speaker performing the functions of the Parliamentary Treasurer.

### **Functions of Parliamentary Treasurer**

16. (1) The Parliamentary Treasurer must— 30
- (a) oversee the preparation and implementation of the Provincial Parliament's budget and adjustments budget;
  - (b) promote and enforce transparency and effective management in respect of the revenue, expenditure, assets and liabilities of the Provincial Parliament;
  - (c) enforce this Act; 35
  - (d) promptly provide any information required by National or Provincial Treasury;
  - (e) establish a procedure for dealing with unauthorised, irregular and fruitless and wasteful expenditure; and
  - (f) make financial regulations in accordance with section 39. 40
- (2) The Parliamentary Treasurer may—
- (a) investigate any system of financial management and internal control applied by the Parliamentary Service; and
  - (b) do anything further that is necessary to fulfil its responsibilities effectively.

### **Cash management and investment 45**

17. (1) The Parliamentary Treasurer must prescribe an appropriate policy covering—
- (a) the efficient and effective banking and cash management; and
  - (b) investment of moneys not immediately required.
- (2) The Accounting Officer is responsible for establishing systems and procedures for the effective implementation of the policy prescribed in terms of subsection (1). 50
- (3) The Parliamentary Treasurer must, after consultation with the Minister, determine a process for requisitioning appropriated funds that provides for sound cash-flow management.



### Opening of bank accounts

**18.** (1) The Accounting Officer, with the approval of the Governance Board, and in accordance with the policy referred to in section 17, must open and maintain a bank account in the name of the Provincial Parliament with an institution registered as a bank in terms of the Banks Act, 1990 (Act 94 of 1990). 5

(2) All money received by the Provincial Parliament must be paid into the bank account referred to in subsection (1).

### Restrictions on borrowing, guarantees and other transactions

**19.** (1) The Provincial Parliament may not— 10

- (a) borrow money;
- (b) issue a guarantee or security; or
- (c) enter into any other similar transaction that binds or may bind it to any future financial commitment.

(2) Neither the state nor the Provincial Parliament is bound by a loan, guarantee, security or other transaction entered into in breach of subsection (1). 15

(3) Subsection (1) does not prevent the Provincial Parliament from—

- (a) issuing or being bound by guarantees for loans in terms of a housing scheme administered by the Parliamentary Service for Members or officials;
- (b) entering into a lease agreement for the use of property or equipment; or
- (c) using credit cards, fleet management cards or other credit facilities repayable within 30 days from the date on which an account is rendered. 20

### Accounting Officer

**20.** (1) The Secretary is the Accounting Officer.

(2) The Accounting Officer is accountable to the Governance Board for the financial management of the Provincial Parliament. 25

### General responsibilities of Accounting Officer

**21.** The Accounting Officer—

- (a) must ensure that the Parliamentary Service has and maintains—
  - (i) effective, efficient and transparent systems of financial management, risk management and internal control; 30
  - (ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with the regulations;
  - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; and 35
  - (iv) a system for properly evaluating all major capital projects before a final decision on those projects;
- (b) is responsible for the effective, efficient, economical and transparent use of the resources of the Provincial Parliament;
- (c) must take effective and appropriate steps to— 40
  - (i) collect all money due to the Provincial Parliament;
  - (ii) prevent unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure, and losses resulting from criminal conduct; and
  - (iii) manage available working capital efficiently and economically;
- (d) is responsible for the management, including the safeguarding and the maintenance, of the assets, and for the management of the liabilities, of the Provincial Parliament; 45
- (e) must comply with all tax, levy, duty, pension and audit commitments required by legislation;
- (f) must settle all contractual obligations and pay all money owing, including intergovernmental claims, within the prescribed or agreed period; 50
- (g) on discovery of any unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the Governance Board;
- (h) must take effective and appropriate disciplinary steps against any official who— 55

- (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 Provincial Parliament; or
- (iii) makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure; 5
- (i) before transferring any funds to an entity within or outside government, must obtain a written assurance from the entity that it implements effective, efficient and transparent financial management and internal control systems, or, if such written assurance is not or cannot be given, render the transfer of the funds subject to conditions and remedial measures requiring the entity to establish and implement effective, efficient and transparent financial management and internal control systems; 10
- (j) must enforce compliance with any prescribed conditions if the Provincial Parliament gives financial assistance to any entity or person;
- (k) must take into account all relevant financial considerations, including issues of propriety, regularity and value for money, when policy proposals affecting the Accounting Officer's responsibilities are considered, and when necessary, bring those considerations to the attention of the Governance Board; 15
- (l) must comply, and ensure compliance by the Parliamentary Service, with this Act; and 20
- (m) may not commit the Provincial Parliament to any liability for which money has not been appropriated or approved by the Provincial Parliament.

#### **Accounting Officer's responsibilities relating to budgetary control**

- 22. (1) The Accounting Officer must ensure that—
  - (a) expenditure is in accordance with the approved budget; and 25
  - (b) effective and appropriate steps are taken to prevent unauthorised expenditure.
- (2) The Accounting Officer must, for the purposes of subsection (1)—
  - (a) take effective and appropriate steps to prevent any overspending;
  - (b) report to the Governance Board any impending—
    - (i) under collection of revenue due; 30
    - (ii) shortfalls in budgeted revenue; and
    - (iii) overspending; and
  - (c) comply with any remedial measures imposed by the Governance Board in terms of this Act to prevent overspending.

#### **Accounting Officer's reporting responsibilities 35**

- 23. (1) The Accounting Officer must—
  - (a) keep full and proper records of the financial affairs of the Provincial Parliament in accordance with prescribed norms and standards;
  - (b) prepare financial statements for each financial year in accordance with an accounting practice approved by the Governance Board and complying with the standards of generally recognised accounting practice; 40
  - (c) submit the financial statements within two months after the end of a financial year to—
    - (i) the Auditor-General for auditing; and
    - (ii) the Provincial Treasury to enable that treasury to prepare consolidated financial statements in terms of section 19 of the PFMA; 45
  - (d) submit within five months of the end of a financial year to the Governance Board—
    - (i) an annual report on the activities for that financial year;
    - (ii) the financial statements for that financial year, after those statements have been audited; and 50
    - (iii) the Auditor-General's report on those statements.
- (2) The Auditor-General must—
  - (a) audit the financial statements referred to in subsection (1); and
  - (b) submit an audit report on those statements to the Accounting Officer within two months of receipt of the statements. 55
- (3) The annual report and audited financial statements referred to in subsection (1) must—

- (a) fairly present the state of affairs of the Provincial Parliament, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned; and
- (b) include particulars of—
  - (i) any material losses through criminal conduct, and any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year; 5
  - (ii) any criminal or disciplinary steps taken as a result of such losses, unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure; 10
  - (iii) any material losses recovered or written off; and
  - (iv) any other prescribed matters.
- (4) The Accounting Officer must—
  - (a) each year before the beginning of a financial year provide the Governance Board in the prescribed format with a breakdown per month of the anticipated revenue and expenditure for that financial year; 15
  - (b) each month submit information in the prescribed format on actual revenue and expenditure for the preceding month and the amounts anticipated for that month in terms of paragraph (a); and
  - (c) within 15 days of the end of each month submit to the Governance Board— 20
    - (i) the information for that month;
    - (ii) a projection of expected expenditure and revenue collection for the remainder of the current financial year; and
    - (iii) when necessary, an explanation of any material variances and a summary of the steps that are taken to ensure that the projected expenditure and revenue remain within budget. 25
- (5) If the Accounting Officer is unable to comply with any of the responsibilities determined for the Accounting Officer in this Act, the Accounting Officer must promptly report the inability, together with reasons, to the Governance Board.
- (6) The Accounting Officer must, within 30 days of the end of each quarter, report to the Governance Board on the Parliamentary Service's performance in implementing the performance plan in that quarter. 30

#### **Issues raised in audit reports**

- 24. The Accounting Officer must—
  - (a) promptly address all issues raised by the Auditor-General in an audit report; and 35
  - (b) advise the Governance Board of the steps taken to address the issues.

#### **Consequences of non-compliance with certain provisions**

- 25. If the Accounting Officer does not submit the annual financial statements to the Auditor-General in accordance with section 23(1)(c)— 40
  - (a) the Accounting Officer must promptly submit a written explanation setting out the reasons for the failure to—
    - (i) the Auditor-General; and
    - (ii) the Governance Board; and
  - (b) the Governance Board— 45
    - (i) must report to the Provincial Parliament concerning the reasons for the failure;
    - (ii) must take appropriate steps to ensure that the financial statements are submitted for auditing;
    - (iii) may order that disciplinary steps be taken against the Accounting Officer or official responsible for the failure; and 50
  - (c) the Auditor-General may issue a special report on the failure to the Provincial Parliament, which report must be made public.

#### **Reporting of irregularities**

- 26. The Accounting Officer must, immediately on discovery, report particulars of any unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure, or the likelihood of any such expenditure, to the Governance Board. 55

### Delegation of powers and duties by Accounting Officer

27. (1) The Accounting Officer may delegate any power or duty conferred or imposed on the Accounting Officer by or in terms of this Act to another official in accordance with a system of delegation.
- (2) The Accounting Officer must develop the system of delegation with the concurrence of the Governance Board, and it must—
- (a) maximise administrative and operational efficiency; and
  - (b) provide adequate checks and balances in the financial management of the Provincial Parliament.
- (3) The Accounting Officer must regularly review delegations made in terms of subsection (1) and, if necessary, amend or withdraw any of those delegations.
- (4) A delegation in terms of subsection (1)—
- (a) must be in writing;
  - (b) is subject to any limitations and conditions the Accounting Officer may impose;
  - (c) may be to an individual or to the holder of a specific post in the Parliamentary Service;
  - (d) may authorise the official to subdelegate, in writing, the delegated authority or duty to another official, or to the holder of a specific post in the Parliamentary Service; and
  - (e) does not divest the Accounting Officer of responsibility for the exercise of the delegated power or the performance of the delegated duty.
- (5) The Accounting Officer may confirm, vary or revoke any decision taken by an official in terms of a delegation under subsection (1), subject to any rights that may have become vested as a consequence of the decision.

### Responsibilities of officials

28. Every official who exercises financial management responsibilities must—
- (a) comply with this Act to the extent that it is applicable to that official;
  - (b) comply with the terms of any delegation in terms of section 27; and
  - (c) take all reasonable steps within that official's area of responsibility to ensure that—
    - (i) the Provincial Parliament's system of financial management and internal control is implemented diligently;
    - (ii) the Provincial Parliament's financial and other resources are used effectively, efficiently and transparently;
    - (iii) any unauthorised expenditure, irregular expenditure, fruitless and wasteful expenditure and other losses are prevented, and, when such expenditure or losses occur, are reported to the Accounting Officer;
    - (iv) all revenue due to the Provincial Parliament is collected; and
    - (v) the Provincial Parliament's assets and liabilities are managed effectively, and that assets are safeguarded and maintained appropriately.

### Fiduciary responsibilities

29. (1) The Accounting Officer and other officials with responsibility under this Act must—
- (a) act with fidelity, honesty, integrity and in the best interests of the Provincial Parliament in managing its financial affairs;
  - (b) disclose all material facts which are available to that person or reasonably discoverable, and which in any way might influence any decision or action in terms of this Act; and
  - (c) seek to prevent any prejudice to the financial interests and good reputation of the Provincial Parliament.
- (2) For the purposes of subsection (1), any disclosure must be made—
- (a) in the case of the Accounting Officer, to the Governance Board; and
  - (b) in the case of any other person, to the Accounting Officer.
- (3) No persons having any responsibility under this Act—
- (a) may act in a way that is inconsistent with the Act; or

- (b) may use their position or any confidential information obtained in the exercise of their responsibilities for personal gain or to benefit improperly themselves or any other person.

### **Preparation of strategic plan and performance plan**

**30.** (1) The Accounting Officer must, after an election of the Provincial Parliament, prepare a draft strategic plan for the Parliamentary Service in accordance with directives issued by the Governance Board and present it to the Board for approval. 5

(2) The Accounting Officer must every year, before the start of the financial year, prepare a draft performance plan for the Parliamentary Service in accordance with directives issued by the Governance Board and present it to the Board for approval. 10

### **Annual budget and adjustments budget**

**31.** (1) The Accounting Officer must every year, in the prescribed manner and within the prescribed timeframe, prepare a draft budget for the Provincial Parliament and an adjustments budget and present it to the Governance Board for consideration.

(2) The budget must specify the Provincial Parliament's expected revenues, 15 distinguishing between—

- (a) funds to be appropriated through the provincial annual budget;
- (b) funds that are a direct charge against the Provincial Revenue Fund; and
- (c) funds derived from the Provincial Parliament's own revenue sources, including donor funding. 20

(3) The Board must, after consultation with the Minister—

- (a) determine a process and timeframes for submitting the Provincial Parliament's budget and adjustments budget in a manner that is coordinated with the processes of the Provincial Treasury;
- (b) approve that budget and adjustments budget. 25

(4) The Board must submit the budget and adjustments budget to the Provincial Treasury for consolidation in the provincial annual budget or provincial adjustments budget, as the case may be.

### **Annual appropriations and approvals**

**32.** (1) For each financial year, the Provincial Parliament must— 30

- (a) appropriate funds contemplated in section 31(2)(a) in the provincial annual budget; and
- (b) approve the use of the funds contemplated in section 31(2)(c).

(2) Any revision of an appropriation in terms of subsection (1)(a) must be made—

- (a) by a provincial adjustments budget referred to in section 31 of the PFMA; and 35
- (b) in accordance with the procedure set out in section 31 of this Act.

(3) Any revision of an approval in terms of subsection (1)(b) must be approved by the Provincial Parliament.

### **Expenditure before annual budget is passed**

**33.** If the Provincial Parliament does not pass the provincial annual budget before the start of the financial year to which it relates, section 29 of the PFMA applies. 40

### **Unauthorised expenditure**

**34.** (1) Unauthorised expenditure incurred by the Parliamentary Service does not become a charge against the Provincial Revenue Fund, unless the expenditure is—

- (a) an overspending of the approved budget and the Provincial Parliament appropriates an additional amount to cover the overspending; or 45
- (b) unauthorised for another reason and the Provincial Parliament authorises the expenditure as a direct charge against the Provincial Revenue Fund.

(2) The Parliamentary Treasurer must advise the Provincial Treasury of any unauthorised expenditure that is authorised in terms of subsection (1). 50

(3) If the Provincial Parliament authorises unauthorised expenditure in terms of subsection (1) but does not appropriate an additional amount to cover the amount of the

unauthorised expenditure, the unauthorised expenditure becomes a charge against the Provincial Parliament's own funds.

(4) Any unauthorised expenditure that the Provincial Parliament does not approve must be recovered from the person responsible for the unauthorised expenditure.

#### **Virement between main divisions** 5

**35.** (1) The Accounting Officer may use a saving in the total amount appropriated or approved under a main division towards defraying excess expenditure under another main division, unless the Governance Board directs otherwise.

(2) The Accounting Officer must obtain the written permission of the Governance Board to defray excess expenditure contemplated in subsection (1) from the savings of an amount— 10

- (a) specifically and exclusively appropriated or approved for a purpose mentioned under a main division;
- (b) appropriated or approved for transfer to another institution; or
- (c) appropriated or approved for capital expenditure if it is to be used to defray current expenditure. 15

(3) The Governance Board must table all decisions for permission contemplated in subsection (2) in the Provincial Parliament for ratification.

(4) The amount of a saving under a main division that may be used in terms of subsection (1), may not exceed the percentage stipulated in section 43(2) of the PFMA of the amount appropriated and approved under that main division. 20

(5) This section does not authorise the use of a saving of an amount that is a direct charge against the Provincial Revenue Fund in order to supplement the Provincial Parliament's appropriated funds.

#### **Financial misconduct** 25

**36.** (1) The Accounting Officer commits an act of financial misconduct if the Accounting Officer intentionally or negligently—

- (a) contravenes a provision of this Act;
- (b) fails to comply with a duty imposed by this Act on the Accounting Officer;
- (c) makes or permits, or instructs another official to make, an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information in any document which must be submitted to the Governance Board, the Provincial Treasury or the Auditor-General in terms of this Act. 30

(2) The Governance Board must— 35

- (a) investigate promptly any allegation of financial misconduct against the Accounting Officer; and
- (b) if the investigation warrants such a step, institute disciplinary proceedings promptly and in accordance with applicable systems and procedures.

(3) An official to whom a power or duty has been delegated in terms of section 27, or who exercises financial management responsibilities in terms of section 28, commits an act of financial misconduct if that official intentionally or negligently— 40

- (a) fails to carry out the delegated power or duty;
- (b) contravenes or fails to comply with a condition of the delegated power or duty;
- (c) makes or permits, or instructs another official to make, an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information in any document submitted to the Accounting Officer. 45

(4) The Accounting Officer must— 50

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

#### **Offences**

**37.** (1) It is an offence for the Accounting Officer to— 55

- (a) intentionally or in a grossly negligent way contravene or fail to comply with a provision of section 21, 22 or 23;



- (b) fail to take all reasonable steps to prevent corrupt practices in the—
    - (i) management of the Provincial Parliament's assets or receipt of money; or
    - (ii) implementation of the Parliamentary Services' supply chain management system;
  - (c) intentionally mislead or withhold information from the Governance Board or Auditor-General on any bank accounts of the Provincial Parliament or on money received or spent by the Parliamentary Service; or 5
  - (d) intentionally provide false or misleading information in any document which in terms of this Act must be submitted to the Governance Board or the Auditor-General. 10
- (2) It is an offence for an official who exercises financial management responsibilities in terms of section 28, intentionally or in a grossly negligent way to fail to fulfil those responsibilities.
- (3) It is an offence for any person to contravene section 29(3)(b).

## **Penalties** 15

**38.** A person convicted of an offence in terms of section 37 is liable to a fine or to imprisonment for a period not exceeding five years or both the fine and the imprisonment.

## **CHAPTER 4**

### **REGULATIONS AND DIRECTIVES** 20

#### **Financial Regulations**

- 39.** (1) The Parliamentary Treasurer must, after consultation with the Governance Board, make regulations regarding—
- (a) any matter in respect of which this Act requires regulations;
  - (b) the handling of, and control over, the assets of the Provincial Parliament; 25
  - (c) the alienation, letting or other disposal of the assets of the Provincial Parliament;
  - (d) an appropriate supply chain management system for the Provincial Parliament;
  - (e) internal control and internal audit; 30
  - (f) the rendering of free services by the Parliamentary Service;
  - (g) the writing off of or settling of claims in respect of—
    - (i) losses of money or other assets of the Provincial Parliament; or
    - (ii) amounts owed to the Provincial Parliament;
  - (h) liability for losses and damages, and procedures for recovery, including the recovery of unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure; 35
  - (i) the cancellation or variation of contracts that are to the detriment of the Provincial Parliament;
  - (j) the settlement of claims by or against the Provincial Parliament; 40
  - (k) the waiver of claims by the Provincial Parliament;
  - (l) the remission of money due to the Provincial Parliament;
  - (m) virement between main divisions; and
  - (n) gifts or donations to officials.
- (2) The Parliamentary Treasurer may, after consultation with the Governance Board, 45 make regulations regarding—
- (a) any matter that may be prescribed in terms of this Act;
  - (b) the investigation of allegations of financial misconduct;
  - (c) the handling of donor funds and other funds received by the Provincial Parliament otherwise than through an appropriation in terms of section 31(1)(a); and 50
  - (d) any other matter concerning the financial management of the Provincial Parliament which is necessary for or may facilitate the administration and implementation of Chapter 3.
- (3) The regulations may not be inconsistent with this Act or with any treasury norms 55 and standards introduced by the national legislation contemplated in section 216(1) of the Constitution of the Republic of South Africa, 1996.



(4) The Parliamentary Treasurer must publish a draft of any proposed regulations for public comment.

(5) A regulation does not take effect unless it has been approved by the Provincial Parliament.

(6) The Accounting Officer must publish all regulations approved by the Provincial Parliament in a parliamentary paper and in the *Provincial Gazette*. 5

### **Directives**

**40.** (1) The Governance Board may issue directives consistent with this Act regarding—

- (a) any matter in respect of which this Act requires or envisages the issuing of directives; 10
- (b) conditions of service and other requirements of appointment or transfer in or to the Parliamentary Service;
- (c) access control and security issues; and
- (d) generally, any other matter relating to the functioning of the Parliamentary Service. 15

(2) The Board must within 14 days after issuing a directive in terms of subsection (1) submit a copy of the directive to the Committee.

## **CHAPTER 5**

### **MISCELLANEOUS** 20

#### **Liability of functionaries**

**41.** (1) The Governance Board, the Accounting Officer or any other official exercising a power or performing a function in terms of this Act, is not liable for any loss or damage resulting from the exercise of that power or the performance of that function in good faith. 25

(2) Without limiting liability in terms of the common law or other legislation, the Provincial Parliament may recover from the Accounting Officer or any other official, any loss or damage suffered by it because of the intentional or negligent unlawful actions of the Accounting Officer or that other official when performing a function in terms of this Act. 30

#### **Repeal of legislation**

**42.** The Western Cape Law on the Powers and Privileges of the Provincial Legislature, 1995, (Law 3 of 1995), and the Western Cape Law on the Powers and Privileges of the Provincial Legislature Amendment Act, 1998 (Act 3 of 1998) are hereby repealed. 35

#### **Short title and commencement**

**43.** (1) This Act is called the Western Cape Parliamentary Service and Finance Management Act, 2010.

(2) Subject to the transitional arrangements set out in the Schedule, sections 23, 25, and 31 to 36 come into effect at the start of the first financial year after the publication of this Act in terms of section 33(1) of the Constitution of the Western Cape, 1997. 40

**SCHEDULE****Transitional Arrangements**

(1) The administration of the Provincial Parliament as it existed immediately before the date of commencement of section 2 continues to function as the Parliamentary Service, and every person serving on the staff of the Provincial Parliament immediately before that date is regarded as having been appointed in accordance with this Act and the directives referred to in section 40. 5

(2) Until the date referred to in section 43(2), the Parliamentary Service must continue to comply with any applicable requirement of the PFMA and regulations made under the PFMA. 10

(3) Until such time as any regulation that must be made in terms of this Act comes into force, any policies, regulations, instructions or rules concerning the subject-matter of the regulation remain in force.

(4) If, when section 7 comes into effect, there is no performance agreement for the Accounting Officer as required by that section, an agreement must be concluded within a month. 15

(5) After section 26 has come into effect, no powers referred to in that section may be delegated until the system of delegation anticipated in that section has been adopted, except that, subject to the other provisions of this Act—

- (a) officials exercising powers delegated to them by the Accounting Officer before section 26 came into effect may continue to do so; and 20
- (b) if a power was delegated to the holder of an office in the Provincial Parliament or the Parliamentary Service before section 26 came into effect, the holder of that office and any future holder of the office may continue to exercise that power. 25

**MEMORANDUM ON THE OBJECTS OF THE WESTERN CAPE  
PARLIAMENTARY SERVICE AND FINANCE MANAGEMENT BILL,  
2009**

**Background**

1. The Constitution of the Western Cape, 1997 (the Provincial Constitution), empowers the Provincial Parliament to determine and control its own internal arrangements, proceedings and procedures. An important aspect of this right of the Provincial Parliament is the in-house control of its own administration, including the appointment of its own staff and the appropriation and expenditure of moneys for its services.
2. Chapter 3A of the Western Cape Law on the Powers and Privileges of the Provincial Legislature Act, 1995, regulates certain aspects of the financial arrangement of the Provincial Parliament, amongst others by providing that the Speaker is vested with the control of the expenditure and appropriation of moneys for the services of the Provincial Parliament. That Chapter also provides for the appointment of a Secretary and other staff for the Provincial Parliament.
3. The Constitution of the Republic of South Africa, 1996 (the National Constitution), requires transparency and accountability in all budget processes and effective financial management of the public sector. The Public Finance Management Act, 1999 (PFMA), provides the framework within which this can be achieved in national and provincial departments and certain other entities. The PFMA also establishes uniform treasury norms and standards as required by section 216 of the National Constitution. However, only a few provisions of the PFMA are applicable to the Provincial Parliament. In practice, the Provincial Parliament has voluntarily complied with the PFMA and Treasury regulations and instructions under the PFMA.
4. In terms of the PFMA and the Western Cape Law on the Powers and Privileges of the Provincial Legislature Act, 1995, the Speaker exercises treasury control over the Provincial Parliament. In practice, the Speaker also performs the functions of executive authority within the meaning of the PFMA. This fusion of different management roles is inconsistent with the principles of good corporate governance as set out in, amongst others, the King II Report on Corporate Governance for South Africa and the Report of a Study Group on Benchmarks for Democratic Legislatures, published by the Commonwealth Parliamentary Association.
5. The national Parliament recently adopted legislation to regulate the financial management of Parliament (the Financial Management of Parliament Act, 2009). That Act also prescribes norms and standards which a provincial legislature must adhere to in enacting legislation to regulate its financial management.

**Objects of Bill**

6. The Bill has two main objects: Firstly to establish a Parliamentary Service and a Governance Board. The Parliamentary Service, a continuance of the existing staff establishment, is to provide services to the Members of the Provincial Parliament to enable them to perform their functions. The Governance Board will be the executive authority responsible for controlling the revenue, expenditure, assets and liabilities of the Provincial Parliament. All members of the Governance Board will be members of the Provincial Parliament; accordingly they are bound by the Code of Conduct adopted by the Provincial Parliament in terms of the Members of the Western Cape Provincial Parliament Code of Conduct Act, 2002 (Act 3 of 2002). The Bill provides that members of the Governance Board will be accountable to the Provincial

Parliament. Secondly, the Bill seeks to consolidate and regulate the financial management of the Provincial Parliament in line with the Parliament's constitutional status and applicable national norms and standards. A Parliamentary Treasurer is being established, with the Speaker performing the functions of the treasurer. The Secretary to the Provincial Parliament is to be the Accounting Officer.

### **Contents of Bill**

7. The gist of the clause by clause contents of the Bill is reflected in the Arrangements of Sections (before section 1) and the respective section headings. In summary some of the most notable aspects of the Bill are as follows:

**CHAPTER 2** sets out the proposed new governance arrangements for the Provincial Parliament. It deals, amongst others, with the establishment of the Parliamentary Service (**clause 2**), the Governance Board (**clause 3**), a parliamentary committee to maintain oversight of the financial management of the Provincial Parliament (**clause 9**), and an audit committee (**clause 10**).

**CHAPTER 3** regulates the financial management of the Provincial Parliament. Amongst others, the Chapter deals with the financial responsibilities of Governance Board (**clause 11**), the requirements for directives having financial implications (**clause 12**), financial support for Members and political parties (**clause 14**), the establishment of a Parliamentary Treasurer (**clause 15**), the functions and responsibilities of the Accounting Officer and other officials involved in financial matters (**clauses 21-29**), the preparation of a strategic plan and an annual performance plan (**clause 30**), the annual budget of the Provincial Parliament (**clause 31**), annual appropriations and approvals (**clause 32**), financial misconduct (**clause 36**), and offences and penalties (**clauses 37-38**).

**CHAPTER 4** makes provision for regulations made by the Parliamentary Treasurer (**clause 39**) and directives issued by the Governance Board (**clause 40**).

**CHAPTER 5** deals with miscellaneous matters such as the liability of functionaries (**clause 41**) and the repeal of legislation (**clause 42**). The commencement of the legislation is regulated by **clause 43(2)**, read with the **Schedule**.

### **Financial implications for the Province**

8. The Provincial Parliament will have to adapt and strengthen its existing financial management systems, but this should not entail substantial costs.

