

REPUBLIC OF SOUTH AFRICA

FINANCIAL MANAGEMENT OF PARLIAMENT AMENDMENT BILL

*(As amended by the Select Committee on Finance (National Council of Provinces)
(The English text is the official text of the Bill)*

(STANDING COMMITTEE ON FINANCE)

[B 1B—2014]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Financial Management of Parliament Act, 2009 so as to insert further definitions; to deal with the financial management of provincial legislatures; to amend the provisions dealing with the oversight mechanism; to amend provisions dealing with Parliament's annual budget, appropriations and approvals; to amend the provisions dealing with donor funds; to delete certain provisions dealing with Parliament's own revenue sources; to align the provisions dealing with reporting and auditing with the Public Finance Management Act, 1999; to repeal certain sections of the Powers and Privileges Act, 1963; to delete certain references to "provincial legislatures" in the Public Finance Management Act, 1999; to include references to performance management; to amend the long title; and to provide for matters connected therewith.

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

Amendment of the arrangement of sections of Act 10 of 2009

1. The arrangement of sections before the Preamble to the Financial Management of Parliament Act, 2009 (hereinafter referred to as the "principal Act") is hereby amended 5
by—

(a) the substitution for item 3 of the following item:

"3. [Norms and standards for provincial legislatures] Application
 of the Act to provincial legislatures"; and

(b) the deletion of the reference to Schedule 1. 10

Substitution of Preamble of Act 10 of 2009

2. The following Preamble is hereby substituted for the Preamble of the principal Act:

"PREAMBLE

Recognising—

 that Parliament and provincial legislatures must be governed by the 15
 democratic values and principles in the Constitution.

Therefore in order to—

- promote and maintain a high standard of professional ethics in the financial management of Parliament and provincial legislatures;

- promote the efficient, economic, and effective use of resources allocated to Parliament and provincial legislatures;
- ensure the transparent, accountable and sound management of the revenue, expenditure, assets and liabilities of Parliament and provincial legislatures;”.

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Amendment of section 1 of Act 10 of 2009

3. Section 1 of the principal Act is hereby amended by—

- (a) the substitution of the definition of **“approved budget”** with the following:
 - “**“approved budget”** means the total amount of funds [that Parliament has—
 - (a) appropriated from the National Revenue Fund for Parliament in a vote on a national appropriation Act; and
 - (b) approved from Parliament’s own funds in terms of section 18(1)(b)] contemplated in section 18;”;
- (b) the insertion of the following definition after the definition of **“approved budget”**:
 - “**“Constitution”** means the Constitution of the Republic of South Africa, 1996;”;
- (c) the insertion of the following definition after the definition of **“a person in the employ of the state”**:
 - “**“Parliament”** means the National Assembly and the National Council of Provinces referred to in section 42(1) of the Constitution;”;
- (d) the insertion of the following definitions after the definition of **“prescribe”**:
 - “**“provincial annual budget”** means the provincial annual budget referred to in section 27(2) of the Public Finance Management Act;”;
 - “**“provincial legislature”** means a provincial legislature referred to in section 104 of the Constitution;”.

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Substitution of section 2 of Act 10 of 2009

4. The following section is hereby substituted for section 2 of the principal Act:

“Objects of this Act

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2. The objects of this Act are—

- (a) to ensure transparency, accountability and sound management of the revenue, expenditure, assets and liabilities of Parliament;
- (b) to ensure a consultative relationship between Parliament and the National Treasury, conducted at a high level and based on respect for—
 - (i) the constitutional status of Parliament;
 - (ii) the constitutional requirements for the tabling of money bills;
 - (iii) budget processes, standards of generally recognised accounting practice, uniform expenditure classifications and the treasury norms and standards established in terms of the Public Finance Management Act; and
 - (iv) the fiscal policy of the national government;
- (c) to provide the National Treasury with—
 - (i) an opportunity to make comments on proposed annual budgets and adjustments budgets of Parliament;
 - (ii) information on the proposed annual budget and adjustments budgets of Parliament for inclusion in the national annual budget and adjustments budgets; and
 - (iii) regular information on expenditure by Parliament; and
- (d) to provide for parliamentary oversight of Parliament’s budgeting and expenditure through an appropriate oversight mechanism of Parliament as provided for in section 4 of the Act; and
- (e) to establish norms and standards for managing the financial affairs of provincial legislatures].”.

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Substitution of section 3 of Act 10 of 2009

5. The following section is hereby substituted for section 3 of the principal Act:

“[Norms and standards for provincial legislatures

3. Provincial legislatures must adhere to the norms and standards for financial management set out in Schedule 1.]

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Application of the Act to provincial legislatures

3. (1) This Act, with the necessary changes, applies to provincial legislatures.

(2) In such application, a reference in the Act to—

- (a) Parliament or a House, must be construed as a reference to the provincial legislature concerned; 10
- (b) a joint committee, must be construed as a reference to a committee of the provincial legislature;
- (c) the Speaker of the National Assembly or the Chairperson of the National Council of Provinces, must be construed as a reference to the Speaker of the provincial legislature concerned, except in the case of the Executive Authority making or prescribing regulations or policy in accordance with section 65, read with sections 16(2)(h), 22(5), 24(1), 32(2) and (3), 33(2)(d)(ii), 34, 40, 42(1), 55(3)(g), and 56; 15
- (d) the Deputy Speaker of the National Assembly or the permanent Deputy Chairperson of the National Council of Provinces, must be construed as a reference to the Deputy Speaker of the provincial legislature concerned; 20
- (e) a Member of Parliament, must be construed as a reference to a Member of the provincial legislature concerned; 25
- (f) the Secretary to Parliament, must be construed as a reference to the Secretary of the provincial legislature concerned;
- (g) annual national budget, must be construed as a reference to provincial annual budget;
- (h) the National Treasury, must be construed as a reference to the provincial treasury concerned; 30
- (i) the National Revenue Fund, must be construed as a reference to the Provincial Revenue Fund concerned;
- (j) the Minister of Finance, must be construed as a reference to the Member of the Executive Council responsible for financial matters in the province concerned; 35
- (k) sections 56 and 69 of the Constitution, must be construed as a reference to section 115 of the Constitution;
- (l) the Joint Rules of Parliament, must be construed as a reference to the Rules made by the provincial legislature concerned in terms of section 116 of the Constitution; 40
- (m) section 30 of the Public Finance Management Act must be construed as a reference to section 31 of that Act; and
- (n) a national adjustment budget must be construed as a reference to a provincial adjustment budget.”. 45

Amendment of section 4 of Act 10 of 2009

6. Section 4 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Representation on the oversight mechanism must be in accordance with the Joint Rules of Parliament, which must provide that no Member of Parliament may attend a deliberation on a matter in which that member has a material interest[, except that the members of the Executive Authority, the Deputy Speaker of the National Assembly and the permanent Deputy Chairperson of the National Council of Provinces—

- (a) may not be members of the committee; and

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- (b) may only participate in the deliberations of the committee at the request of the committee.”.

Substitution of section 16 of Act 10 of 2009

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

“Annual budget

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16. (1) At least ten months prior to the start of the financial year, the Accounting Officer must prepare a draft budget for Parliament and present it to the Executive Authority.

(2) Parliament’s budget must—

- (a) cover the following financial year and the two financial years thereafter or other period determined by Parliament; 10
- (b) specify Parliament’s expected revenues distinguishing between—
 - (i) **[funds] money** to be appropriated through the annual national budget;
 - (ii) **[funds that are a direct charge against the National Revenue Fund] conditional and unconditional donor funds;** 15
and
 - (iii) funds derived from Parliament’s own revenue sources[, **excluding donor funds**];
- (c) specify Parliament’s proposed expenditure requirements per main division within the budget, distinguishing between the sources of funds identified in paragraph (b); 20
- (d) specify the purpose of each main division within the budget and provide explanations and other information substantiating the amounts proposed in terms of paragraphs (b) and (c); 25
- (e) specify the allocations to Members of Parliament and political parties made in terms of section 34, providing details of the different purposes for which allocations are made and the amounts allocated for such purposes;
- (f) provide details of all transfers to other entities; and 30
- [(g) contain a schedule of planned expenditure under Parliament’s donor funded projects; and]**
- (h) be in accordance with the format prescribed under section 65, for the purpose of maintaining consistency with the format followed by other organs of state.” 35

Amendment of section 17 of Act 10 of 2009

8. Section 17 of the principal Act is hereby amended by the addition of the following subsection:

“(2) The Executive Authority must table in Parliament, for referral to the oversight mechanism—

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- (a) the draft strategic plan of Parliament, within ten working days of receiving it from the Accounting Officer;
- (b) the draft annual performance plan and draft budget, at least one month before the draft budget must be submitted to the National Treasury;
- (c) the draft adjustments budget, at least one month before the adjustments budget must be submitted to the National Treasury; and
- (d) any draft revisions to the approved allocations of Parliament’s own funds.” 45

Substitution of section 18 of Act 10 of 2009

9. The following section is hereby substituted for section 18 of the principal Act:

“Annual appropriations and approvals

18. (1) For each financial year, Parliament must, according to main divisions— 5
- (a) appropriate [funds contemplated in section 16(2)(b)(iii)] money received [in] through the annual national budget for—
- (i) the financial year, as contemplated in section 16(2)(b)(i), subject to any amount specifically and exclusively appropriated in the annual national budget; and 10
- (ii) the previous financial year but not spent in that year; and
- (b) approve the use of [the funds contemplated in section 16(2)(b)(iii)] unconditional donations and its own revenue—
- (i) contemplated in section 16(2)(b)(ii) and (iii); and
- (ii) approved for the previous financial year but not spent in that year. 15
- (1A) Any appropriation or approval in terms of subsection (1) may be for a specific and exclusive purpose.
- (2) Any revision of an appropriation [in terms of subsection (1)(a)] contemplated in section 16(2)(b)(i) must be made— 20
- (a) by a national adjustments budget referred to in section 30 of the Public Finance Management Act; and
- (b) in accordance with the procedure set out in section 17[(2)](1).
- (3) Any revision of an appropriation or approval in terms of subsection (1)(b) must be approved by Parliament.” 25

Amendment of section 20 of Act 10 of 2009

10. Section 20 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) This section applies to any unauthorised expenditure incurred by Parliament, other than the unauthorised expenditure of funds derived from Parliament’s own resources, including donor funds.” 30

Amendment of section 21 of Act 10 of 2009

11. The following section is hereby substituted for section 21 of the principal Act:

“Unauthorised expenditure of [donor funds] own resources

21. (1) Any unauthorised expenditure of funds derived from Parliament’s own resources, including donor funds, that Parliament approves becomes a charge against Parliament’s own funds. 35
- (2) Any unauthorised expenditure of funds derived from Parliament’s own resources, including donor funds, that Parliament does not approve must be recovered from the person responsible for the unauthorised expenditure.”. 40

Amendment of section 23 of Act 10 of 2009

12. The following section is hereby substituted for section 23 of the principal Act:

“[Treatment]Retention of unspent funds and return of unspent funds for direct charges 45

23. (1) Parliament is not required to return to the National Revenue Fund any money, contemplated in section 16(2)(b)(i), appropriated [or approved] for a particular financial year but not spent in that year.
- [2] Funds appropriated for, but not spent in, a particular financial year must be regarded as funds derived from Parliament’s own 50

revenue sources, and the approval of their use in subsequent financial years must be in accordance with section 18(1)(b).

(3) Funds derived from Parliament's own revenue sources that are approved for a particular financial year, but not spent in that year, must be approved for use in subsequent financial years in accordance with section 18(1)(b).]

(4) Parliament must surrender to the National Treasury for depositing into the National Revenue Fund funds that are a direct charge against the National Revenue Fund for any requirements related to Parliament in terms of any legislation for a particular financial year, but not spent in that year.”.

Amendment of section 34 of Act 10 of 2009

13. Section 34 of the principal Act is hereby amended by—

- (a) the substitution for paragraph (b) of subsection (4) of the following paragraph:

“(b) in instances of a **[qualified]** modified audit [report] opinion in respect of such funding, until adequate measures are put in place to rectify the issues giving rise to the modified audit opinion **[qualification]**.”; and
- (b) the insertion after subsection (4) of the following subsection:

“(4A) For the purposes of this section ‘modified audit opinion’ includes a qualified opinion, an adverse opinion and a disclaimer of opinion.”.

Amendment of section 48 of Act 10 of 2009

14. Section 48 of the principal Act is hereby amended by the substitution for item (iii) of subsection (1)(c) of the following item:

- “(iii) the quality of the annual financial statements, performance reporting and compliance with the applicable laws and regulations.”.

Amendment of section 56 of Act 10 of 2009

15. Section 56 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) For each financial year, the Accounting Officer must prepare annual financial statements in accordance with the **[standards of generally recognised accounting practice]** Standards of Generally Recognised Accounting Practice and, in the absence of an applicable standard, in accordance with standards prescribed by the Executive Authority for the purpose of maintaining consistency with other organs of state.”.

Amendment of section 58 of Act 10 of 2009

16. Section 58 of the principal Act is hereby amended by—

- (a) the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) submit an audit report on those statements to the **[Executive Authority]** Accounting Officer within two months of receiving the statements.”;
- (b) the substitution for subsection (2) of the following subsection:

“(2) If the Auditor-General is unable to complete an audit within two months of receiving the financial statements or the annual performance report, the Auditor-General must promptly submit a report outlining the reasons for the delay to the Executive Authority and the Accounting Officer. **[The Executive Authority must promptly table the report in Parliament.]**;
- (c) the insertion of the following subsection after subsection (2):

“(2A) The Executive Authority must promptly table the report referred to in subsection (2) in Parliament.”; and
- (d) the substitution for subsection (3) of the following subsection:

“(3) Once the Auditor-General has submitted an audit report to the **[Executive Authority]** Accounting Officer, no person may alter the report or the annual financial statements to which the report relates.”.

Substitution of section 59 of Act 10 of 2009

17. The following section is hereby substituted for section 59 of the principal Act:

“**59.** The Accounting Officer must submit Parliament’s annual report, including the audited financial statements for that financial year, the audit report on those statements and the annual performance report, to the Executive Authority [so that the Executive Authority is able to table the report in Parliament] within five months of the end of the financial year concerned.”. 5

Substitution of section 60 of Act 10 of 2009

18. Section 60 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 10

“**60.** (1) The Executive Authority must table the annual report, including the audited financial statements for that financial year, the audit report on those statements and the annual performance report, in Parliament within [five working days] one month [of receiving it.] after the Accounting Officer received the audit report.”. 15

Amendment of section 62 of Act 10 of 2009

19. Section 62 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) If the Executive Authority does not table the annual report in **[Parliament within five months of the end of the financial year concerned]** accordance with section 60(1)—”. 20

Substitution of section 72 of Act 10 of 2009

20. The following section is hereby substituted for section 72 of the principal Act:

“**72.** This Act repeals—
 (a) sections 31 and 39 of the Powers and Privileges of Parliament Act, 1963 (Act No. 91 of 1963); and 25
 (b) in the Public Finance Management Act—
 (i) **[the words “Parliament and” in section]** sections 3(1)(d) and 3(2);
 [(ii) subparagraph (a) of section 3(2);]
 (iii) section 13(1)(a); **[and]** 30
 (iv) the word “Parliament,” in section 13(5);
 (v) section 22(1)(a); and
 (vi) the words ‘a provincial legislature or’ in section 22(5).”

Substitution of short title of Act 10 of 2009

21. The following short title is hereby substituted for the short title and commencement of the principal Act: 35

“**73.** This Act is called the Financial Management of Parliament and Provincial Legislatures Act, 2009 and comes into operation on assent by the President and in accordance with the transitional arrangements set out in Schedule 4 to this Act.”.

Repeal of Schedule 1 of Act 10 of 2009

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22. Schedule 1 of the principal Act is hereby repealed.

Substitution of the long title of Act 10 of 2009

23. The following long title is hereby substituted for the long title of the principal Act:

“To regulate the financial management of Parliament and provincial legislatures in a manner consistent with its status in terms of the Constitution;
to ensure that all revenue, expenditure, assets and liabilities of Parliament and
provincial legislatures are managed efficiently, effectively and transparently;
to provide for the responsibilities of persons entrusted with financial
management in Parliament and provincial legislatures; [to provide financial
 management norms and standards for provincial legislatures]; and to provide
 for matters connected therewith.”.

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Short title and commencement

24. This Act is called the Financial Management of Parliament Amendment Act, 2014 and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTIVES OF THE FINANCIAL MANAGEMENT OF PARLIAMENT AMENDMENT BILL OF 2014

1. BACKGROUND

- 1.1. On 22 March 2012 the Constitutional Court, in *Premier: Limpopo Province v Speaker of the Limpopo Provincial Legislature and Others* 2012 (4) SA 58 (CC), found that the Constitution of the Republic of South Africa, 1996 does not authorise provincial legislatures to pass their own financial management legislation. Consequently, the Court found the various provincial statutes purporting to deal with the financial management of various provincial legislatures unconstitutional and invalid.
- 1.2. Parliament, which enjoys plenary legislative authority, may either assign such power to provincial legislatures or pass national legislation to deal with the financial management of provincial legislatures. The parties to this matter were required by order of the Court to file a report with the Court by 9 September 2013 on what steps have been taken to remedy the defect. Subsequently, the Constitutional Court ordered that the parties report on the implementation of legislation by Monday, 10 March 2014.
- 1.3. On 20 September 2012 the National Assembly referred the Financial Management of Parliament Act, 2009 (Act No. 10 of 2009) to the Standing Committee on Finance to review the Act with a view to introducing amending legislation if necessary. The resolution noted technical challenges with implementation of certain provisions of the Act and instructed the Standing Committee to evaluate the application of the Act, including those provisions relating to authority of provinces to enact similar legislation and timeframes associated with various reporting mechanisms.
- 1.4. It was subsequently decided by the Speaker's forum that the financial management of provincial legislatures will be provided for in an amendment to the Financial Management of Parliament Act instead of assigning such legislative competence to the provincial legislatures.

2. OBJECTIVES OF THE BILL

The objectives of the Bill are to:

- 2.1 Include a new section to make the Act applicable to provincial legislatures;
- 2.1 Amend the section relating to the oversight mechanism;
- 2.2 transfer the duty to submit audited financial statements to the Accounting Officer instead of the Executive Authority in order to stream line the existing practice;
- 2.3 Insert provisions to clarify the procedure for dealing with Parliament's adjustment budget in respect of its own funds;
- 2.4 Amend the sections relating to the tabling of the annual report by the Executive Authority; and
- 2.5 Align the sections relating to the auditing of the annual financial statements and the submission of the annual report to the Public Finance Management Act, 1999.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Secretary to the Parliament of the Republic of South Africa;

The National Treasury; and

The Office of the Auditor-General of South Africa

4. FINANCIAL IMPLICATIONS FOR THE STATE

No financial implications

5. PARLIAMENTARY PROCEDURE

5.1. The Legal Advisers of Parliament are of the opinion that the Bill is a section 76 Bill because it deals with legislation envisaged in Chapter 13 of the Constitution and includes provisions affecting the financial interests of the provincial sphere of government as contemplated in section 76(4)(b) of the Constitution.

5.2. The Legal Advisers of Parliament are further of the view that the Bill does not contain any provisions to customary law or traditional communities and therefore does not have to be referred to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003).

