

REPUBLIC OF SOUTH AFRICA

PUBLIC FINANCE MANAGEMENT AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 41999
of 25 October 2018)
(The English text is the official text of the Bill)*

(Mr R A Lees, MP)

[B 41—2018]

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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 Public Finance Management Act, 1999, so as to provide for parliamentary oversight when a request to issue a guarantee, indemnity or security is approved or rejected; and to provide for matters connected therewith.

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

Amendment of section 70 of Act 1 of 1999

1. Section 70 of the Public Finance Management Act, 1999, is hereby amended by the insertion after subsection (3) of the following subsection: 5

“(3A) The Minister must, within 30 days of granting or refusing a request as contemplated in subsection (1), table a report in the National Assembly, which report must at least set out the following: 10

- (a) Details of the request contemplated in subsection (1), including—
 - (i) the name and portfolio of the requesting Cabinet member; 10
 - (ii) the date on which the request was received;
 - (iii) the value of the guarantee, indemnity or security requested;
 - (iv) the date on which the request was granted or refused;
 - (v) the reasons for the decision contemplated in subparagraph (iv); and
 - (vi) where the request was granted, any terms and conditions to which the issuing of the guarantee, indemnity or security is subject; 15
- (b) whether the guarantee, indemnity or security binds the National Revenue Fund or a national public entity;
- (c) where the guarantee, indemnity or security binds a national public entity, details of such national public entity; 20
- (d) where the request contemplated in subsection (1) was granted, details of whether the guarantee, indemnity or security was issued and the date on which it was so issued; and
- (e) whether the Cabinet member who requested the concurrence contemplated in subsection (1), has issued any other currently binding guarantees, indemnities or securities.”. 25

Short title and commencement

2. This Act is called the Public Finance Management Amendment Act, 2018, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 30

MEMORANDUM ON THE OBJECTS OF THE PUBLIC FINANCE MANAGEMENT AMENDMENT BILL, 2018

1. INTRODUCTION

Section 70 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (“the Act”), currently grants any Cabinet member the power to issue a guarantee, indemnity or security with the written concurrence of the Minister of Finance. Such a guarantee, indemnity or security may bind the National Revenue Fund in respect of a financial commitment incurred or to be incurred by the national executive, or may bind a national public entity in respect of a financial commitment incurred or to be incurred by that public entity. Despite the significant impact such a guarantee, indemnity or security may have on the economy of the Republic of South Africa, the Act does not make sufficient provision for parliamentary oversight. The Act does provide that the relevant Cabinet member must report any circumstances that resulted in a payment being made under a guarantee, indemnity or security to the National Assembly, but such a report is after the fact. No provision is made for Parliament to be notified when such an instrument is being issued. Should these instruments be subject to public scrutiny from the outset, many of the risks that these instruments pose to the economy, may be addressed timeously.

2. OBJECTS OF THE BILL

The purpose of the Bill is to extend Parliament’s oversight capacity in relation to the granting or refusal of government guarantees, indemnities and securities in terms of the Act. The Bill provides that the Minister of Finance must table a report in Parliament which sets out his or her decision to approve or reject such a guarantee, indemnity or security no less than 30 days after such guarantee, indemnity or security has been approved or rejected in terms of section 70(1) of the Act.

3. CONTENTS OF THE BILL

3.1. Clause 1 requires the Minister to table a report in the National Assembly within 30 days of granting or refusing a request from a Cabinet member to issue a guarantee, indemnity or security, setting out details of the request, the Minister’s decision and the reasons for such decision.

3.2. Clause 2 provides for the short title and commencement.

4. FINANCIAL IMPLICATIONS FOR THE STATE

None.

5. PARLIAMENTARY PROCEDURE

5.1 It is proposed that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution as it deals with matters envisaged of Chapter 13 of the Constitution.

5.2 The member is of the opinion that it is not necessary to refer this Bill 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), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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