

Eastern Cape, South Africa

# Financial Management of the Eastern Cape Provincial Legislature Act, 2009

Act 3 of 2009

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## Eastern Cape South Africa

# Financial Management of the Eastern Cape Provincial Legislature Act, 2009

### Act 3 of 2009

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**Assented to on 27 January 2010**

**Commenced on 27 January 2010**

*[This is the version of this document from 27 January 2010  
and includes any amendments published up to 15 April 2024.]*

## ACT

**To regulate the financial management of the Eastern Cape Provincial Legislature in a manner consistent with its status in terms of the Constitution; to ensure that all revenue, expenditure, assets and liabilities of the provincial legislature are managed efficiently, effectively and transparently; to provide for the responsibilities of persons entrusted with financial management in the provincial legislature; and to provide for matters connected therewith.**

Recognising -

that the Legislature must be governed by the 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 the Legislature;
- promote the efficient, economic, and effective use of resources allocated to the Legislature;
- ensure the transparent, accountable and sound management of the revenue, expenditure, assets and liabilities of the Legislature;

BE IT THEREFORE ENACTED by the Provincial Legislature of the Province of the Eastern Cape as follows -

### Chapter 1 Interpretation and objects

#### 1. Definitions

In this Act, unless the context indicates otherwise —

“**Accounting Officer**” means the Secretary to the Legislature, and includes, where appropriate; a person acting as Secretary, duly appointed by the Executive authority in terms of [section 4](#);

“**annual provincial budget**” means the annual provincial budget referred to in section 27 (2) of the Public Finance Management Act;

“**annual report**”, means the annual report referred to in [section 54](#);

**“approved budget”** means the total amount of funds that the Legislature has -

- (a) appropriated from the Provincial Revenue Fund for the Legislature in a vote on a provincial appropriation Act; and
- (b) approved from the Legislature’s own funds in terms of [section 15\(2\)\(b\)](#);

**“Budget and Oversight Committee”** means a committee of the Legislature responsible for oversight in terms of this Act;

**“Executive Authority”** means the Speaker of the Legislature;

**“financial year”** means a year ending 31 March;

**“fruitless and wasteful expenditure”** means expenditure that was made in vain and would have been avoided had reasonable care been exercised;

**“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;

**“Legislature”** means the provincial legislature of the Province of the Eastern Cape

**“main division”** means one of the main segments into which the Legislature’s approved budget is divided and which specifies the total amount which is appropriated and approved for the items under that segment;

**“MEC”** means the Member of the Executive Council responsible for Finance in the province;

**“month”** means a calendar month;

**“official”** means an employee of the Legislature or any other person to whom any function is delegated in terms of this Act;

**“overspending”**—

- (a) in relation to the approved budget of the Legislature means causing expenditure to exceed the amount appropriated and approved for the approved budget; or
- (b) in relation to a main division within the approved budget of the Legislature, means causing expenditure under the main division to exceed the amount appropriated or approved for that main division;

**“person in the employ of the state”** means

- (a) a member of the board of directors of any municipal entity;
- (b) an official of any municipality or municipal entity;
- (c) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act;
- (d) a member of the accounting authority of any national or provincial public entity; or
- (e) an employee of The Legislature or a provincial legislature;

**“political parties”** means political parties represented in the Legislature;

**“prescribed”** means prescribed by regulation in accordance with [section 64](#);

**“Public Finance Management Act”** means the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#));

**“quarter”** means any of the following periods in a financial year:

- (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;

**“standards of generally recognised accounting practice”** means an accounting practice complying with the standards issued by the Minister of Finance on the advice of the Accounting Standards Board;

**“this Act”** includes regulations issued in terms of [section 65](#) and Schedules to the Act;

**“unauthorised expenditure”** means —

(a) overspending of the Legislature’s approved budget or a main division within that budget;

(b) any expenditure from the Legislature’s approved budget or a main division within that budget for a purpose unrelated to the approved budget or main division, subject to [section 21](#); and

(c) any expenditure of donor funds for a purpose not specified in the agreement with the donor; and

**“vote”** means that portion of the Legislature’s budget which forms part of an appropriation Act and which specifies the total amount of funds to be appropriated from the Provincial Revenue Fund for the Legislature.

## 2. Objects of this Act

(1) The objects of this Act are -

- (a) to ensure transparency, accountability and sound management of the Legislature’s revenue, expenditure, assets and liabilities;
- (b) to ensure a consultative relationship between the Legislature and the Provincial Treasury, conducted at a high level and based on respect for -
  - (i) the constitutional status of the Legislature;
  - (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 provincial government to the extent that it is applicable to the Legislature;
- (c) to provide the Provincial Treasury with -
  - (i) an opportunity to make comments on proposed annual budgets and adjustments budgets of the Legislature;
  - (ii) information on the proposed annual budget and adjustments budgets of the Legislature for inclusion in the provincial annual budget and adjustments budgets; and
  - (iii) regular information on expenditure by the Legislature; and
- (d) to provide for oversight of the Legislature’s budgeting and expenditure through an appropriate committee of the Legislature.

## **Chapter 2**

### **Oversight, Executive Authority and administration of Act**

#### **Part 1 – Budget and Oversight Committee**

#### **3. The Budget and Oversight Committee**

- (1) A Budget and Oversight Committee must maintain oversight of the financial management of the Legislature by among other things -
  - (a) considering the strategic plan, annual performance plan and budget tabled in the Legislature in terms of [section 16\(1\)](#);
  - (b) considering instructions or directives issued by the Executive Authority in terms of this Act;
  - (c) considering the annual report submitted to the Legislature in terms of [section 59](#); and
  - (d) performing any other functions specified in this Act or by the Rules of the Legislature, or consistent with the objects of this Act.
- (2) Representation on the Committee must be in accordance with the Rules of the Legislature except that the Speaker and the Deputy Speaker -
  - (a) may not be members of the Committee; and
  - (b) may only attend the proceedings at the request of the Committee.
- (3) The Committee may require the Accounting Officer or any other official of the Legislature to appear before it.
- (4) The Committee has the powers that committees of the Legislature have under section 115 of the Constitution and the Standing Rules of the Legislature.

#### **Part 2 – Executive Authority**

#### **4. Executive Authority**

- (1) The Speaker of the Legislature is the Executive Authority of the Legislature.
- (2) The Executive Authority is responsible for the treasury functions in respect of the Legislature.
- (3) The Executive Authority is accountable to the Legislature for the effective and efficient financial management of the Legislature.
- (4) The Executive Authority appoints the accounting officer
- (5) The Executive Authority must act in accordance with the Code of Ethics in Schedule 1.

#### **Part 3 – Administration of Act**

#### **5. Accounting Officer**

- (1) The Secretary to the Legislature is the Accounting Officer of the Legislature.
- (2) The Accounting Officer is accountable to the Executive Authority for the financial management of the Legislature.



## 6. General financial management functions

- (1) The Accounting Officer must ensure that -
  - (a) the Legislature's resources are used effectively, efficiently and transparently;
  - (b) full and proper records of the financial affairs of the Legislature are kept;
  - (c) the Legislature maintains effective, efficient and transparent systems of financial management, risk management, internal control and internal audit;
  - (d) the Legislature complies with any obligations in relation to taxes, levies, duties, pensions, medical aid and auditing that may be imposed by legislation;
  - (e) the Legislature has appropriate systems to manage the performance of its officials;
  - (f) there are suitable training and awareness programmes related to financial management for officials of the Legislature;
  - (g) unauthorised, irregular and fruitless and wasteful expenditure and other losses are prevented, and appropriate steps are taken where such expenditure has occurred;
  - (h) disciplinary action is instituted against any employee of the Legislature who has allegedly committed an act of financial misconduct; and
  - (i) when appropriate, criminal proceedings are initiated against any person who has allegedly committed an offence in terms of [section 68](#).
  - (j)

## 7. Performance of Accounting Officer

- (1) The Executive Authority and the Accounting Officer must conclude a written performance agreement for the Accounting Officer annually.
- (2) The performance agreement referred to in subsection (1) must -
  - (a) be concluded within a reasonable time after the Accounting Officer is employed and thereafter within one week after the start of each financial year;
  - (b) specify performance standards linked to the objectives and targets of the Legislature's performance plan for the financial year;
  - (c) provide for an annual assessment of the Accounting Officer's performance by the Executive Authority; and
  - (d) specify the consequences of sub-standard performance.
- (3) The provisions of this Act conferring responsibilities on the Accounting Officer are part of the performance agreement of an Accounting Officer.
- (4) The annual assessment of the Accounting Officer's performance must take cognisance of the audit report on the annual financial statements of the Legislature.

## 8. Acting Accounting Officer

- (1) If the Accounting Officers is unable to perform the functions of the post for a period of fourteen days or less, those functions must be performed by another official designated in writing by the Accounting Officer.
- (2) If the post of Accounting Officer is vacant, or if the Accounting Officer is unable to perform the functions of the post for a period of more than 14 days, those functions must be performed by another official designated in writing by the Executive Authority.

## 9. Delegation of authority and duties by Accounting Officer

- (1) The Accounting Officer may delegate any authorities or duties conferred on the Accounting Officer by this Act to an official of the Legislature in accordance with a system of delegation.
- (2) The Accounting Officer must develop the system of delegation in consultation with the Executive Authority and it must-
  - (a) maximise administrative and operational efficiency; and
  - (b) provide adequate checks and balances in the financial management of the Legislature.
- (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 administration of the Legislature;
  - (d) may authorise that official to sub-delegate, in writing, the delegated power or duty to another official, or to the holder of a specific post in the administration of the Legislature; 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.

## 10. Responsibilities of officials

Every official must -

- (a) comply with the provisions of this Act, to the extent applicable to that official;
- (b) comply with the terms of any delegation in terms of [section 9](#); and
- (c) take all reasonable steps within that official's area of responsibility to ensure that -
  - (i) the Legislature's system of financial management and internal control is implemented diligently;
  - (ii) the Legislature'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 Legislature is collected; and
  - (v) the Legislature's assets and liabilities are managed effectively, and that assets are safeguarded and maintained to the extent necessary.

## **11. Fiduciary responsibilities**

- (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 Legislature 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 Legislature.
- (2) For the purposes of subsection 1(b), any disclosure must be made -
  - (a) in the case of the Accounting Officer to the Executive Authority; and
  - (b) in the case of any other person, to the Accounting Officer.
- (3) No person 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.

## **Chapter 3 Planning and budgeting**

## **12. Preparation of strategic plan, annual performance plan and budget**

The Executive Authority must -

- (a) oversee the preparation of the Legislature's strategic plan, annual performance plan, budget and adjustments budgets in accordance with this Chapter; and
- (b) table the strategic plan and annual performance plan in the Legislature.

## **13. Strategic plan**

- (1) The Accounting Officer must, within six months after an election of the Legislature, prepare and present to the Executive Authority a draft strategic plan for the Legislature.
- (2) The strategic plan for the Legislature's administration must -
  - (a) cover the following five years or other period determined by the Legislature;
  - (b) specify the priorities of the Legislature's administration for the period of the plan;
  - (c) include objectives and outcomes for each programme of the Legislature;
  - (d) include multi-year projections of all revenue and expenditure; and
  - (e) include performance measures and indicators for assessing the administration's performance in implementing the strategic plan.

## **14. Annual performance plan**

- (1) The Accounting Officer must, within ten months prior to the start of the financial year, prepare a draft annual performance plan for the Legislature and present it to the Executive Authority.

- (2) The annual performance plan must -
  - (a) cover the following financial year and the two financial years thereafter or other period determined by the Legislature;
  - (b) indicate any changes to the Legislature's priorities as set out in the strategic plan prepared in terms of [section 13](#);
  - (c) update the projections of revenue and expenditure presented in the strategic plan;
  - (d) specify performance targets related to each of the performance measures and indicators for assessing the Legislature's performance in achieving the objectives and outcomes detailed in the strategic plan; and
  - (e) provide details of the Legislature's donor funded projects, including -
    - (i) the donors and the amounts being given;
    - (ii) the purposes of the projects; and
    - (iii) performance measures and indicators for assessing the Legislature's performance in achieving the purposes of the projects.

## 15. Annual budget

- (1) The Accounting Officer must, within ten months prior to the start of the financial year, prepare a draft budget for the Legislature and present it to the Executive Authority.
- (2) The Legislature's budget must -
  - (a) cover the following financial year and the two financial years thereafter or other period determined by the Legislature;
  - (b) specify the Legislature's expected revenues distinguishing between -
    - (i) funds to be appropriated through the annual provincial budget;
    - (ii) funds that are a direct charge against the Provincial Revenue Fund; and
    - (iii) funds derived from the Legislature's own revenue sources, excluding donor funds;
  - (c) specify the Legislature's proposed expenditure requirements per main division within the budget, distinguishing between the sources of funds identified in paragraph (b);
  - (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);
  - (e) specify the allocations to Members of the Legislature and political parties made in terms [section 33](#), 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;
  - (g) contain a schedule of planned expenditure under the Legislature's donor funded projects; and
  - (h) be in a prescribed format.

## 16. Submission of drafts of strategic plan, annual performance plan and budget

- (1) The Executive Authority must table in the Legislature, for referral to the Committee -
  - (a) the draft strategic plan of the Legislature, 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 Provincial Treasury;
  - (c) the draft adjustments budget, at least one month before the adjustments budget must be submitted to the Provincial Treasury; and
  - (d) any draft revisions to the approved allocations of the Legislature's own funds.
- (2) The Executive Authority must -
  - (a) after consultation with the MEC, determine a process for submitting the Legislature's budget and adjustments budget to the Provincial Treasury;
  - (b) determine the budget of the Legislature after consultation with the MEC before the budget and adjustment budgets are finalised and the provincial budget is introduced; and
  - (c) submit the budget and adjustments budget to the Provincial Treasury.
- (3) The budget determined by the Speaker may be amended by the Legislature after introduction in terms of the legal mechanisms developed by the Legislature.

## **17. Annual appropriations and approvals**

- (1) For each financial year, the Legislature must -
  - (a) appropriate funds contemplated in [section 15\(2\)\(b\)\(i\)](#) in the annual provincial budget; and
  - (b) approve the use of the funds contemplated in [section 15\(2\)\(b\)\(iii\)](#).
- (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 Public Finance Management Act; and
  - (b) in accordance with the procedure set out in [section 16\(2\)](#).
- (3) Any revision of an approval in terms of subsection (1)(b) must be approved by the Legislature.

## **18. Expenditure before the Legislature's annual budget is passed**

- (1) If the Legislature does not pass its annual budget before the start of the financial year to which it relates -
  - (a) funds may be withdrawn from the Provincial Revenue Fund for the requirements of the Legislature during that financial year as a direct charge against the Fund until the budget is passed; and
  - (b) funds from the Legislature's own revenue sources may be used to meet the requirements of the Legislature.
- (2) Funds made available to the Legislature in terms of subsection (1) may not -
  - (a) during the first four months of the financial year, exceed forty-five per cent of the total amount in the previous approved budget;
  - (b) during each of the following months, exceed ten per cent of the total amount in the previous approved budget; or
  - (c) in aggregate, exceed the total amount appropriated and approved in the previous approved budget.
- (3) The funds provided for in subsection (1) are not additional to funds appropriated or approved for the relevant financial year, and any funds withdrawn or used in terms of that subsection must be

regarded as forming part of the funds appropriated and approved in the budget for that financial year.

## **19. Unauthorised expenditure**

- (1) This section applies to any unauthorised expenditure incurred by the Legislature, other than the unauthorised expenditure of donor funds.
- (2) Unauthorised expenditure incurred by the Legislature does not become a charge against the Provincial Revenue Fund, unless -
  - (a) the expenditure is an overspending of the Legislature's approved budget and the Legislature appropriates an additional amount to cover the overspending; or
  - (b) the expenditure is unauthorised for another reason and the Legislature authorises the expenditure as a direct charge against the Provincial Revenue Fund.
- (3) The Legislature must advise the Provincial Treasury of any unauthorised expenditure that is authorised in terms of subsection (2).
- (4) If the Legislature authorises unauthorised expenditure in terms of subsection (2) but does not appropriate an additional amount to cover the amount of the unauthorised expenditure, the unauthorised expenditure becomes a charge against the Legislature's own funds.
- (5) Any unauthorised expenditure that the Legislature does not approve must be recovered from the person responsible for the unauthorised expenditure.

## **20. Unauthorised expenditure of donor funds**

- (1) Any unauthorised expenditure of donor funds that the Legislature approves becomes a charge against the Legislature's own funds.
- (2) Any unauthorised expenditure of donor funds that the Legislature does not approve must be recovered from the person responsible for the unauthorised expenditure.

## **21. Virement between main divisions within the approved budget**

- (1) The Accounting Officer may use a saving in the total amount appropriated or approved under a main division within the Legislature's approved budget towards defraying excess expenditure under another main division within the approved budget, unless the Executive Authority directs otherwise.
- (2) The Accounting Officer must obtain the written permission of the Executive Authority to defray excess expenditure contemplated in subsection (1) from the savings of an amount -
  - (a) specifically and exclusively appropriated or approved for a purpose mentioned under a main division within the approved budget;
  - (b) appropriated or approved for transfer to another institution; or
  - (c) appropriated or approved for capital expenditure when used to defray current expenditure.
- (3) The amount of a saving under a main division of the Legislature's approved budget that may be used in terms of subsection (1), may not exceed eight per cent of the amount appropriated and approved under that main division.
- (4) 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 Legislature's appropriated funds.
- (5) The Executive Authority may make regulations or issue instructions in accordance with sections [64](#) and [65](#) respectively concerning the application of this section.

## 22. Treatment of unspent funds

- (1) The Legislature is not required to return to the Provincial Revenue Fund any money 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 the Legislature's own revenue sources, and the approval of their use in subsequent financial years must be in accordance with [section 17\(1\)\(b\)](#).
- (3) Funds derived from the Legislature'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 year in accordance with [section 17\(1\)\(b\)](#).

## Chapter 4 Cash management and investment

## 23. Cash management and investment policy

- (1) The Executive Authority must prescribe in accordance with [section 64](#) an appropriate policy —
  - (a) to ensure efficient and effective banking and cash management; and
  - (b) for investing money 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).

## 24. Opening of bank accounts

- (1) The Accounting Officer, with the approval of the Executive Authority, and in accordance with the policy referred to in [section 23](#), must open and maintain -
  - (a) a bank account into which all money received by the Legislature must promptly be paid; and
  - (b) such other bank accounts as are necessary for the effective and efficient management of the Legislature's funds.
- (2) The Legislature may not open a bank account -
  - (a) abroad;
  - (b) with an institution not registered as a bank in terms of the Banks Act, 1990 ([Act No. 94 of 1990](#)); or
  - (c) otherwise than in the name of the Legislature.
- (3) bank account opened in terms of this section does not form part of the Provincial Revenue Fund.

## 25. Control of bank accounts

- (1) The Accounting Officer —
  - (a) must administer all of the Legislature's bank accounts;
  - (b) is accountable to the Executive Authority for the Legislature's bank accounts; and
  - (c) must enforce compliance with [section 26](#).

## 26. Withdrawals from bank accounts

- (1) Only the accounting officer, or an official to whom that power has been delegated in terms of [section 9](#), may withdraw money, or authorise the withdrawal of money, from any of the Legislature's bank accounts.
- (2) A delegation in terms of subsection (1) must be in accordance with the policy made in terms of [section 23](#).
- (3) Money may be withdrawn from a bank account of the Legislature only for -
  - (a) defraying expenditure in accordance with the Legislature's approved budget or authorised for the Legislature as a direct charge against the Provincial Revenue Fund;
  - (b) defraying expenditure incurred in relation to a donor funded project;
  - (c) refunding money incorrectly paid into a bank account;
  - (d) making other refunds approved by the Executive Authority; or
  - (e) cash management or investment purposes in accordance with the policy made in terms of [section 23](#).

## 27. Restrictions on borrowing, guarantees and other transactions

- (1) The Legislature may not -
  - (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 Legislature is bound by a loan, guarantee, security or other transaction entered into in breach of sub-section (1).
- (3) Subsection (1) does not prevent the Legislature from -
  - (a) issuing or being bound by guarantees for loans in terms of housing administered by the Legislature for its employees;
  - (b) entering into any operating lease agreement for the use of property or equipment; or
  - (c) using credit cards, fleet management cards or other credit facilities repayable within thirty days from the date on which an account is rendered.

## 28. Requisitioning of funds by Accounting Officer

The Executive Authority must, after consultation with the MEC, determine a process for requisitioning appropriated funds that provides for sound cash-flow management.

# Chapter 5

## Financial management

## 29. Asset and liability management

- (1) The Accounting Officer is responsible for managing -
  - (a) the Legislature's assets, including safeguarding and maintaining those assets; and



- (b) the Legislature's liabilities.
- (2) For the purposes of subsection (1), the Accounting Officer must ensure that -
  - (a) the Legislature maintains an accounting and information system that accounts for its assets and liabilities;
  - (b) the Legislature's assets and liabilities are valued in accordance with standards of generally recognised accounting practice; and
  - (c) the Legislature maintains a system of internal control of assets and liabilities, including a register of assets and liabilities.

### 30. Revenue management

- (1) The Accounting Officer is responsible for managing the revenue of the Legislature.
- (2) For the purposes of subsection (1), the Accounting Officer must ensure that -
  - (a) the Legislature has effective revenue collection systems;
  - (b) all money received is deposited promptly into the bank account contemplated by [section 24\(1\)\(a\)](#);
  - (c) the Legislature maintains an accounting and information system which -
    - (i) recognises revenue when it is earned or becomes due; and
    - (ii) accounts for receipts of revenue;
  - (d) the Legislature maintains a system of internal control in respect of revenue; and
  - (e) all revenue received by the Legislature is reconciled at least on a weekly basis.

### 31. Management of debtors

- (1) The Accounting Officer must take effective and appropriate steps to collect all monies due to the Legislature including -
  - (a) maintaining proper accounts and records of all debtors, including amounts received in part payment; and
  - (b) if appropriate, instituting legal proceedings.
- (2) The Accounting Officer may settle or write off a debt only in accordance with a policy prescribed in accordance with [section 64](#).
- (3) Interest must be charged on any debt owed to the Legislature in accordance with a policy prescribed in [section 64](#).

### 32. Expenditure management

- (1) The Accounting Officer is responsible for managing the expenditure of the Legislature.
- (2) For the purpose of subsection (1), the Accounting Officer must ensure that -
  - (a) the Legislature maintains an effective system of expenditure control, which includes procedures for the approval and authorisation of the withdrawal and payment of funds;
  - (b) the Legislature maintains an accounting and information system which -
    - (i) recognises expenditure when it is incurred;
    - (ii) accounts for creditors of the Legislature; and

- (iii) accounts for payments made by the Legislature;
- (c) the Legislature maintains a system of internal control in respect of creditors and payments;
- (d) the Legislature makes payment -
  - (i) directly to the person to whom it is due unless agreed otherwise or for good reason; and
  - (ii) either electronically or by way of non-transferable cheques, but cash payments and payments by way of cash cheques may be made for exceptional reasons, and only up to a prescribed limit;
- (e) all amounts owed by the Legislature are paid within 30 days of receiving the relevant invoice or statement, unless -
  - (i) the amount is unclear or disputed; or
  - (ii) it is agreed otherwise; and
- (f) all financial accounts of the Legislature are closed monthly and reconciled with its records.

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

- (1) The Executive Authority must make regulations concerning the allocation and use of any funds provided by the Legislature to political parties or to Members of the Legislature.
- (2) Before making regulations in terms of subsection (1), the Executive Authority must consult with the political parties.
- (3) The regulations 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 the Members of the Legislature and political parties to account for allocated funds;
  - (e) establish a procedure according to which Members of the Legislature and political parties account for the use of funds;
  - (f) prescribe a format for financial statements for accounting for the use of funds;
  - (g) require political parties to submit audited financial statements in the prescribed format to the Accounting Officer;
  - (h) provide for the recovery of funds spent irregularly; and
  - (i) establish a dispute resolution procedure.
- (4) The regulations must authorise the Accounting Officer to withhold funds allocated to a political party or a Member of the Legislature -
  - (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 the Legislature funds by the political party or Member; and
    - (iii) any other information reasonably necessary to confirm that the political party or Member is entitled to the funds; and

- (b) in instances of a qualified audit report in respect of such funding, until adequate measures are put in place to rectify the qualification.
- (5) Each political party must be provided with financial and administrative assistance in proportion to its representation to enable it and its leader to perform their functions in the Legislature effectively.

### **34. Transfers**

- (1) Before transferring any funds from the Legislature to any other entity, the Accounting Officer must -
  - (a) obtain a written assurance from the entity that it implements effective, efficient and transparent financial management and internal control systems; or
  - (b) render the transfer subject to conditions and remedial measures requiring the entity to establish and implement effective, efficient and transparent financial management and internal control systems.
- (2) Subsection (1) does not apply to:
  - (a) to transfers to entities in other countries or to international institutions.
  - (b) Any transfer contemplated by subparagraph (a) is governed by the instrument regulating the relationship between South Africa and that entity or institution.

### **35. Budget implementation**

The Accounting Officer is responsible for implementing the Legislature's budget and must ensure that -

- (a) spending is in accordance with the approved budget; and
- (b) revenue and expenditure are properly monitored.

### **36. Executive directive with financial implications**

- (1) directive by the Executive Authority that has financial implications must -
  - (a) be in writing; and
  - (b) be addressed to the Accounting Officer.
- (2) If implementation of a directive contemplated by subsection (1) 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 Executive Authority 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 Executive Authority in terms of subsection (5), and it results in unauthorised expenditure, the Accounting Officer is responsible for such unauthorised expenditure.
- (4) An official may not implement a directive by the Executive Authority that may have financial implications, unless the Accounting Officer issues a written instruction to proceed with implementation.

- (5) The Executive Authority 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) an expenditure of an exceptional nature which is currently not provided for in the Legislature's budget and which cannot, without serious prejudice to the interests of the Legislature, be postponed to a future appropriation or approval of funds; or
  - (b) an unforeseeable and unavoidable expenditure approved by the Legislature.
- (6) If the Executive Authority instructs the Accounting Officer to proceed with the implementation of a directive contemplated in subsection (2), the Executive Authority must specify the instruction and the reasons for that instruction in writing and without delay -
  - (a) give a copy to the Accounting Officer; and
  - (b) table a copy in the Legislature for prompt referral to the Committee.
- (7) On receipt of a written instruction contemplated in subsection (6), the Accounting Officer must file a copy with the Auditor-General promptly.

### **37. Impending shortfalls and overspending**

The Accounting Officer must -

- (a) report in writing to the Executive Authority -
  - (i) any impending shortfalls in budgeted revenue and overspending of a main division within the Legislature's vote; and
  - (ii) any steps taken to prevent or rectify such shortfalls or overspending; and
- (b) comply with any remedial measures imposed by the Executive Authority to prevent or rectify such shortfalls or overspending.

## **Chapter 6 Supply chain management**

### **38. Application of this Chapter**

- (1) This Chapter applies to -
  - (a) the procurement by the Legislature of goods and services; and
  - (b) the disposal and letting of the Legislature's assets, including the disposal of goods no longer required.

### **39. Supply chain management policy**

- (1) The Executive Authority must prescribe in accordance with [section 64](#) a supply chain management policy which -
  - (a) is fair, equitable, transparent, competitive and cost effective;
  - (b) promotes high ethical standards and prohibits fraud, corruption, favouritism and unfair and irregular practices;
  - (c) requires disclosure of and deals appropriately with conflicts of interests;
  - (d) establishes appropriate supply chain management processes and procedures, including-
    - (i) demand management;

- (ii) acquisition management;
  - (iii) logistics management;
  - (iv) disposal management;
  - (v) risk management; and
  - (vi) regular assessment of supply chain performance; and
- (e) complies with other applicable legislation.<sup>1</sup>

<sup>1</sup> This includes the Preferential Procurement Policy Framework Act, 2000 ([Act No. 5 of 2000](#)) and the Broad-Based Black Economic Empowerment Act, 2003 ([Act No. 53 of 2003](#)). [PERMANENT FOOTNOTE]

#### **40. Implementation of supply chain management policy**

- (1) The Accounting Officer must -
- (a) implement the supply chain management policy;
  - (b) take all reasonable steps to ensure that proper mechanisms are in place to minimise dishonesty, favouritism and unfair and irregular practices;
  - (c) ensure that contracts concluded for the supply of services and goods are properly enforced;
  - (d) monitor the performance of contractors; and
  - (e) regularly report to the Executive Authority on-
    - (i) the management of contracts and the performance of contractors; and
    - (ii) the implementation of the policy.

#### **41. Unsolicited offers**

- (1) The Executive Authority may prescribe a policy in accordance with [section 64](#) for considering offers to supply goods or services that are unsolicited or are made otherwise than in accordance with the supply chain management policy contemplated in [section 39](#).
- (2) The Accounting Officer-
- (a) is not obliged to consider any offer contemplated in subsection (1); and
  - (b) may consider an offer contemplated in subsection (1) only in accordance with the prescribed policy.

#### **42. Tenders not recommended**

- (1) The Accounting Officer must notify the Auditor-General and the Executive Authority in writing if a contract is concluded in respect of a tender, quotation, or other bid other than the one recommended.
- (2) Subsection (1) does not apply if a contract was concluded in order to rectify an irregularity.

#### **43. Members of the Legislature barred from serving on tender committees**

No Member of the Legislature may -

- (a) be a member of a committee evaluating or approving tenders, quotations, contracts or other bids for the Legislature;
- (b) attend any meeting of such committee as an observer; or

- (c) participate in any other way in evaluating or approving tenders, quotations, contracts or other bids for the Legislature.

#### **44. Interference**

No person may -

- (a) interfere with, or improperly influence, the supply chain management system of the Legislature;
- (b) impede the Accounting Officer in fulfilling the responsibilities of the Accounting Officer in terms of this Chapter; or
- (c) amend or tamper with any tender, quotation, contract or bid after its submission.

#### **45. Prohibition on contracts**

No contract to provide goods or services to the Legislature may be awarded to -

- (a) A Member of parliament or a member of the cabinet;
- (b) a Member of the provincial legislature or a Member of the Executive Council;
- (c) a Municipal Councillor
- (d) person in the employ of the State whose participation in bidding for the contract may result in a conflict of interest; or
- (e) any entity in which a person mentioned in paragraphs (a) to (d) is a Director or has a controlling or other substantial interest.

### **Chapter 7**

#### **Audit committee and internal audit unit**

#### **46. Establishment of audit and advisory committee**

- (1) The Legislature must have an audit and advisory committee appointed by the Executive Authority, after consultation with the Accounting officer.
- (2) The audit and advisory committee must -
  - (a) be constituted in a manner that ensures its independence; and
  - (b) consist of at least three persons with appropriate experience and knowledge.
- (3) More than half of the members of the audit and advisory committee must be individuals who-
  - (a) are not employed by the Legislature or the state and are not Members of The Legislature, a provincial legislature, or a Municipal Council; and
  - (b) have no personal or financial interest in any matter related to the Legislature.
- (4) The Executive Authority must appoint one of the members contemplated by subsection (3), who has the requisite knowledge and expertise of the functional area of the audit committee and has the business, financial and leadership skills, as the chairperson of the committee.
- (5) Subject to subsection (6), the terms of appointment and remuneration of members of the audit and advisory committee contemplated by subsection (3) must be consistent with the requirements for audit committees of other organs of state, taking into account tariffs determined by the South African Institute of Chartered Accountants in consultation with the Auditor-General, and tariffs determined by the National Treasury.

- (6) A member of the audit and advisory committee who has a personal or financial interest in any matter before that committee must disclose that interest to that committee and withdraw from the proceedings when that matter is considered.

#### **47. Functions of audit and advisory committee**

- (1) The audit and advisory committee must-
- (a) in consultation with the internal auditors, establish an audit charter to -
    - (i) guide its audit approach and that of the internal auditors;
    - (ii) set out its operating procedures; and
    - (iii) determine the rules that govern its relationship with the internal auditors and the Accounting Officer;
  - (b) carry out such investigations into the Legislature's financial and risk management as it considers necessary or as requested by the Accounting Officer, or the Executive Authority;
  - (c) advise the Executive Authority on any matter submitted by the Executive Authority.
  - (d) in the annual report of the Legislature, comment on -
    - (i) the effectiveness of internal control;
    - (ii) the quality of financial management and any reports compiled by the Accounting Officer in terms of this Act; and
    - (iii) the quality of the annual financial statements;
  - (e) report to and advise the Accounting Officer and the Executive Authority on matters relating to the financial and risk management of the Legislature; and
  - (f) communicate any concerns it deems necessary to the Executive Authority and the Auditor-General.
- (2) In performing its functions, the audit and advisory committee -
- (a) has access to the financial records and other relevant information of the Legislature;
  - (b) must meet as often as required to perform its functions, but at least four times a year; and
  - (c) must liaise with -
    - (i) the internal auditors of the Legislature; and
    - (ii) the person designated by the Auditor-General to audit the financial statements of the Legislature.

#### **48. Allegations against Accounting Officer**

If the audit committee becomes aware of information implicating the Accounting Officer in fraud, corruption or gross negligence, it must report this promptly to the Executive Authority and the Committee.

#### **49. Internal audit**

- (1) The Accounting Officer must establish the Legislature's internal audit function which must carry out internal audits in accordance with the standards set by the Institute of Internal Auditors.
- (2) The internal auditors must prepare for the approval of the audit committee -
- (a) operating procedures to guide its relationship with the administration of the Legislature;

- (b) a three-year risk-based audit plan; and
  - (c) an internal audit programme for each financial year setting out the proposed scope of each audit.
- (3) The internal auditors must report at least quarterly to the Accounting Officer and the audit committee on its performance against the annual audit plan.
- (4) The internal auditors must -
  - (a) be independent of the activities that are audited; and
  - (b) have access to the financial records and other relevant information of the Legislature.

## **Chapter 8**

### **Reporting and auditing**

#### **Part 1 – In-year reporting**

##### **50. Monthly financial reports**

- (1) The Accounting Officer must, within fifteen days after the end of each month, submit financial reports to the Executive Authority and Provincial Treasury, in a format determined by the Executive Authority, reflecting the state of the Legislature's finances for that month and for the financial year to date and specifying -
  - (a) actual revenue by revenue source;
  - (b) actual expenditure by main division;
  - (c) actual capital expenditure by main division; and
  - (d) when necessary, an explanation of -
    - (i) any material variances from the Legislature's projected revenue by source, and from the Legislature's expenditure projections by main division; and
    - (ii) any remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within the Legislature's approved budget.
- (2) The report must include a projection of revenue and expenditure for the remainder of the financial year, and any revisions from initial projections.
- (3) The amounts reflected in the report must in each case be compared with the corresponding amounts set out in the projected cash-flows and in the Legislature's budget.

##### **51. Quarterly performance reports**

The Accounting Officer must, within thirty days of the end of each quarter, report to the Executive Authority on the Legislature's performance in implementing the annual performance plan in that quarter.

##### **52. Mid-year budget and performance assessment**

- (1) The accounting officer must, before 31 October of each year, submit to the Executive Authority a report that assesses the performance of the Legislature's administration during the first half of the financial year, taking into account -
  - (a) the monthly statements referred to in [section 50](#) for the first half of the financial year;



- (b) the past year's annual report, and progress on resolving problems identified in the report; and
  - (c) performance in implementing the annual performance plan.
- (2) In the report the Accounting Officer must -
  - (a) recommend whether an adjustments budget may be necessary; and
  - (b) revise projections for revenue and expenditure to the extent that this may be necessary.

### **53. Submission of reports to the Committee**

- (1) The Executive Authority must table the monthly, quarterly and mid-year reports in the Legislature within five working days of receiving the reports.
- (2) The Legislature must refer the reports to the Committee promptly.

## **Part 2 – Annual report, financial statements and auditing**

### **54. Preparation of annual reports**

- (1) The Accounting Officer must, for each financial year, prepare an annual report.
- (2) The purpose of an annual report is to -
  - (a) provide a record of the activities of the Legislature's administration during the financial year to which the report relates;
  - (b) provide a report on performance of the Legislature's administration; and
  - (c) promote accountability for decisions made during the year by the Legislature's administration.
- (3) The annual report must be based on the annual performance plan and must contain -
  - (a) the annual financial statements of the Legislature for the relevant financial year as submitted to the Auditor-General;
  - (b) any explanations that may be necessary to clarify the financial statements;
  - (c) the Auditor-General's audit report on those financial statements;
  - (d) an assessment by the Accounting Officer of the performance of the Legislature during that financial year against the objectives and outcomes identified in the Legislature's annual performance plan;
  - (e) particulars of any corrective action taken or to be taken in response to issues raised in the audit report referred to in paragraph (c);
  - (f) the audit committee's report; and
  - (g) any other prescribed information.

### **55. Preparation of financial statements**

- (1) The Accounting Officer must, for each financial year, prepare annual financial statements in accordance with the standards of generally recognised accounting practice or in accordance with standards prescribed by the Executive Authority for the purpose of maintaining consistency with other organs of state.

- (2) The notes to the annual financial statements must -
- (a) include particulars of the remuneration of the Accounting Officer and senior managers, whether financial or otherwise;
  - (b) disclose, in respect of each bank account held by the Legislature during the relevant financial year -
    - (i) the name of the bank where the account is or was held, and the type of account; and
    - (ii) year opening and year end balances in each of these bank accounts;
  - (c) provide a summary of all investments of the Legislature as at the end of the financial year; and
  - (d) provide particulars of -
    - (i) all unauthorised expenditure that occurred during the financial year indicating whether it is recoverable and distinguishing between unauthorised expenditure of appropriated and approved funds, and unauthorised expenditure of donor funds;
    - (ii) all material losses, and irregular and fruitless and wasteful expenditure that occurred during the financial year indicating whether these are recoverable;
    - (iii) any disciplinary or criminal steps instituted as a result of such losses or unauthorised, irregular or fruitless and wasteful expenditures; and
    - (iv) any material losses written off.

## **56. Submission of annual financial statements**

- (1) Accounting Officer must, within two months after the end of the financial year, submit the annual financial statements to -
- (a) the Executive Authority;
  - (b) the Auditor-General for auditing; and
  - (c) to Provincial Treasury for inclusion in the consolidated financial statements.

## **57. Auditing of annual financial statements**

- (1) The Auditor-General must -
- (a) audit the financial statements submitted in terms of [section 56](#); and
  - (b) submit an audit report on those statements to the Executive Authority within two months of receiving the statements.
- (2) If the Auditor-General is unable to complete an audit within two months of receiving the financial statements, the Auditor-General must promptly submit a report outlining the reasons for the delay to the Executive Authority.
- (3) The Executive Authority must promptly table the report referred to in subsection (2) in the Legislature.

## **58. Submission of annual report**

The Accounting Officer must submit the Legislature's annual report to the Executive Authority within one month of receipt from the Auditor-General.

**59. Tabling and consideration of annual report**

- (1) The Executive Authority must table the annual report in the Legislature.
- (2) The annual report, including the audited financial statements and audit report, must be made public.
- (3) The annual report of the Legislature must, after tabling, be referred to the Committee.

**60. Issues raised in audit reports**

- (1) The Accounting Officer must -
  - (a) promptly address any issues raised by the Auditor-General in an audit report; and
  - (b) advise the Executive Authority of the steps taken to address the issues.

**61. Consequences of non-compliance with certain provisions**

- (1) If the Accounting Officer does not submit the annual financial statements to the Auditor-General in accordance with [section 56](#) -
  - (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 Executive Authority; and
  - (b) the Executive Authority -
    - (i) must report to the Legislature concerning the reasons for the failure;
    - (ii) must take appropriate steps to ensure that the financial statements are submitted for auditing; and
    - (iii) may order that disciplinary steps be taken against the Accounting Officer or official responsible for the failure; and
  - (c) the Auditor-General may issue a special report on such failure to the Legislature which must be made public.
- (2) If the Executive Authority does not table the annual report in the Legislature within six months after the end of the financial year to which it relates —
  - (a) the Executive Authority -
    - (i) must table a report on the reasons for the failure in the Legislature;
    - (ii) must take appropriate steps to ensure that the annual report is tabled in the Legislature; and
    - (iii) may order that disciplinary steps be taken against the Accounting Officer or official responsible for the failure.

**Part 3 – General reporting responsibilities****62. Reporting of irregularities**

The Accounting Officer must report particulars of any unauthorised, irregular or fruitless and wasteful expenditure, or the likelihood of any such expenditure, to the Executive Authority immediately on discovery.

### 63. Other information

The Accounting Officer must comply with any request by the Legislature, the Committee, the Executive Authority, or the Auditor-General for information, documents, explanations and motivations.

## Chapter 9 Regulations and instructions

### 64. Regulations

- (1) The Executive Authority may issue regulations not inconsistent with this Act concerning-
  - (a) any matter in respect of which this Act authorises regulations or policy;
  - (b) the handling of, and control over, the assets of the Legislature;
  - (c) the improvement and maintenance of the assets of the Legislature;
  - (d) the alienation, letting or other disposal of the assets of the Legislature;
  - (e) an appropriate supply chain management system for the Legislature which complies with
  - (f) the financial management of the provision of support services and constituency funding to political parties represented in the Legislature;
  - (g) the rendering of free services by the Legislature's administration;
  - (h) the determination of any scales of fees, other charges or rates relating to services provided by the Legislature's administration;
  - (i) the writing off of, or settling of claims in respect of, losses of money or other assets of the Legislature or amounts owed to the Legislature;
  - (j) liability for losses and damages, and procedures for recovery, including the recovery of fruitless and wasteful, unauthorised and irregular expenditure;
  - (k) the cancellation or variation of contracts that are to the detriment of the Legislature;
  - (l) the settlement of claims by or against the Legislature;
  - (m) the waiver of claims by the Legislature;
  - (n) the remission of money due to the Legislature;
  - (o) gifts or donations to officials of the Legislature;
  - (p) vouchers or other proofs of receipts or payments, which are defective or have been lost or damaged;
  - (q) varying the time period within which any act must be performed in terms of this Act if it is necessary to achieve conformity with the budgeting or accounting cycles applicable to the public sector; and
  - (r) any other matter concerning the financial management of the Legislature that may facilitate the application of this Act.
- (2) Regulations in terms of subsection (1) may prescribe that the prior approval of the Executive Authority must be obtained for particular actions.
- (3) The Accounting Officer must-
  - (a) ensure that drafts of regulations required by this Act are prepared;

- (b) periodically review regulations made in terms of the Act; and
  - (c) when appropriate, ensure that draft amendments are prepared.
- (4)
  - (a) The Executive Authority may approve departures from regulations or condone a failure to comply with a regulation provided that the objectives of the Act are not undermined.
  - (b) The reasons for any decision taken in terms of paragraph (a) must be recorded in writing and submitted to the oversight mechanism promptly.
- (5) The Executive Authority must ensure that a draft of any proposed regulations dealing with any matter contemplated in [section 34](#) or Chapter 6 is published for public comment.
- (6) Regulations issued by the Executive Authority in terms of subsection (1) may come into effect only after they have been approved by the Legislature.
- (7) The Accounting Officer must publish all regulations approved by the Legislature –
  - (a) in a the Announcements, Tablings and Committee Reports document of the Legislature; and
  - (b) in the *Provincial Gazette*, if the regulations deal with a matter contemplated by subsection (5).

## 65. Instructions

- (1) The Executive Authority may, for the purpose of implementing this Act, issue written instructions not inconsistent with this Act or its regulations.
- (2) A copy of any instruction issued in terms of subsection (1) must be submitted to the Budget and Oversight Committee promptly.

## Chapter 10 Financial misconduct

### Part 1 – Disciplinary proceedings

## 66. Financial misconduct by Accounting Officer

- (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 a provision of this Act on the Accounting Officer;
  - (c) makes, permits or instructs another official of the Legislature to make an unauthorised, irregular or fruitless and wasteful expenditure; or
  - (d) provides incorrect or misleading information in any document which must be submitted to the Executive Authority, the Provincial Treasury or the Auditor-General in terms of this Act.
- (2) The Executive Authority must—
  - (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.

## 67. Financial misconduct by officials

- (1) An official of the Legislature to whom a power or duty was delegated in terms of [section 9](#), or who exercises financial management responsibilities in terms of [section 10](#), commits an act of financial misconduct if that official intentionally or negligently -
  - (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, permits or instructs another official of the Legislature to make, an unauthorised, irregular or fruitless and wasteful expenditure; or
  - (d) provides incorrect or misleading information in any document submitted to the Accounting Officer.
- (2) The Accounting Officer must -
  - (a) investigate any allegation of financial misconduct against an official; and
  - (b) if the investigation warrants such a step, institute disciplinary proceedings within thirty days in accordance with any applicable systems and procedures.

## Part 2 – Criminal proceedings

## 68. Offences

- (1) It is an offence for the Accounting Officer to-
  - (a) intentionally or negligently -
    - (i) contravene or fail to comply with a provision of [section 6](#), [25\(c\)](#), [29\(2\)\(a\)](#) or (c), [30\(2\)](#) (a), (b), (c) or (d), [32\(2\)\(a\)](#), (b), (c), (d) or (f); or
    - (ii) fail to take all reasonable steps to prevent unauthorised, irregular or fruitless and wasteful expenditure;
  - (b) contravene [section 11\(3\)\(b\)](#);
  - (c) fail to take all reasonable steps to prevent corrupt practices -
    - (i) in the management of the Legislature's assets or receipt of money; or
    - (ii) in the implementation of the Legislature's supply chain management system;
  - (d) intentionally mislead or withhold information from the Executive Authority or Auditor-general on any bank accounts of the Legislature or on money received or spent by the Legislature; or
  - (e) intentionally provide false or misleading information in any document which in terms of a requirement of this Act must be submitted to the Executive Authority or Auditor-General.
- (2) It is an offence for any official -
  - (a) to whom a power or duty is delegated in terms of [section 9](#), to contravene or intentionally or negligently fail to comply with the delegation or a condition of the delegation;
  - (b) who exercises financial management responsibilities in terms of [section 10](#), to intentionally or negligently fail to fulfil those responsibilities; or
  - (c) to contravene [section 11\(3\)\(b\)](#).
- (3) It is an offence for any person to contravene [sections 43](#), [44](#), or [46](#).

## **69. Penalties**

A person convicted of an offence in terms of [section 68](#) is liable to a fine or to imprisonment for a period not exceeding five years or both.

## **Chapter 11 Miscellaneous**

### **70. Liability of functionaries exercising powers and functions in terms of this Act**

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

### **71. Short title and commencement**

This Act is called the Financial Management of the Eastern Cape Provincial Legislature Act, 2009 and comes into operation on assent by the Premier and in accordance with the transitional arrangements set out in Schedule 3 to this Act.

## **Schedule 1**

### **Code of Ethics the Executive Authority**

- (1) The object of this Code is to enhance the confidence of the public and Members in the integrity of the management of the Legislature. It applies the Executive Authority of the Legislature and supplements the Legislature's Code of Ethics. It recognises that in holding high public office the Executive Committee has an obligation to perform official functions and duties in a way that will bear the closest public scrutiny, an obligation that is not discharged by simply acting within the law.
- (2) The Executive Authority must conform to the principles of good governance set out in this Schedule.
- (3) The Executive Authority must –
  - (a) fulfil all the obligations placed upon it by the Constitution, the law and the rules, regulations and policies of the Legislature;
  - (b) perform his or her duties and exercise powers with honesty and diligence and in accordance with the highest ethical standards;
  - (c) act in all respects in a manner that is consistent with the integrity of his or her office; and
  - (d) arrange his or her private affairs in a manner that will prevent real, potential or apparent conflicts of interests from arising and, if such a conflict does arise, resolve the conflict in favour of the interests of the Legislature and the public.
- (4) The Executive Authority may not-
  - (a) use her or his position to enrich herself or himself for improperly benefit any other person;
  - (b) expose herself or himself to any situation involving the risk of a conflict between official responsibilities and private interests;

- (c) receive remuneration for any work or service other than for the performance of her or his functions as Executive Authority; or
  - (d) use any allowance provided by the Legislature for a purpose other than that for which it was provided.
- (5) Any complaints concerning adherence to this Code must be determined by the Ethics Committee under the Standing Rules of the Legislature to oversee the Code of Ethics for members of the Legislature.

## Schedule 2

### Matters that must be covered in the Legislature's supply chain management policy

The Legislature's supply chain management policy must cover the following matters-

- (a) the range of supply chain management processes that the Legislature may use, including tenders, quotations, auctions and other types of competitive bidding;
- (b) when the Legislature may or must use a particular type of process;
- (c) procedures and mechanisms for each type of process;
- (d) procedures and mechanisms for more flexible processes where the value of a contract is below a prescribed amount;
- (e) open and transparent pre-qualification processes for tenders or other bids;
- (f) competitive bidding processes in which only pre-qualified persons may participate;
- (g) bid documentation, and the advertising of and invitations for contracts;
- (h) procedures and mechanisms for-
  - (i) the opening, registering and recording of bids in the presence of interested persons;
  - (ii) the evaluation of bids to ensure best value for money;
  - (iii) negotiating the final terms of contracts; and
  - (iv) the approval of bids;
- (i) screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed value;
- (j) compulsory disclosure of any conflicts of interests prospective contractors may have in specific tenders;
- (k) the circumstances in which prospective contractors may be excluded from being considered for any contract on account of a conflict of interest;
- (l) the consequences of failing to disclose conflicts of interest in accordance with the Policy;
- (m) participation in the supply chain management system of persons who are not officials of the Legislature or in the employ of the State;
- (n) the barring of persons from participating in tendering or other bidding processes, including persons-
  - (i) convicted for fraud, corruption or any other crime involving dishonesty in the previous five years;
  - (ii) who wilfully breached a contract with an organ of state during the previous five years; or
  - (iii) whose tax matters are not cleared by South African Revenue Service;



- (o) measures for-
  - (i) combating dishonesty, favouritism and unfair and irregular practices in supply chain management; and
  - (ii) promoting ethics of officials of the Legislature and others involved in supply chain management;
- (p) the invalidation of recommendations or decisions that were made, taken or in any way influenced by-
  - (i) Members of the Legislature in contravention of this Act or any applicable code of ethics for Members of the Legislature;
  - (ii) officials of the Legislature in contravention of this Act or any applicable code of conduct for officials of the Legislature;
- (q) the procurement of goods and services by the Legislature through contracts procured by other organs of state;
- (r) contract management and dispute settling procedures;
- (s) the delegation of the Legislature's supply chain management powers and duties to officials of the Legislature; and
- (t) the circumstances in which a contract or agreement procured through the supply chain management policy of The Legislature may be amended by the parties.

### **Schedule 3**

#### **Transitional arrangements**

- (1) Section 13 and those parts of other sections of this Act that refer to the strategic plan come into effect on the date of the first elections for the Legislature after the Act comes into effect.
- (2) Sections 14 to 19, 21, 22 and 50 to 61 come into effect at the start of the first financial year after the Act comes into effect.
- (3) Until such time as any provision contemplated by items (1) and (2) of this Schedule comes into effect, the Legislature shall continue to comply with any applicable requirement on the Public Finance Management Act and its regulations.
- (4) Until such time as any regulation that must be made in terms of this Act comes into force, any policies, regulations or rules concerning the subject-matter of such regulation remain in force.
- (5) If, when this Act comes into effect, there is no performance agreement for the Accounting Officer as required in terms of section 7, an agreement must be concluded within a month.
- (6) After this Act comes into effect, no powers or duties may be delegated until the system of delegation anticipated in section 9 is adopted; except-
  - (a) officials exercising powers or performing duties delegated to them by the Accounting Officer before the Act came into effect may continue to do so; and
  - (b) if a power or duty was delegated to the holder of an office in The Legislature before the Act came into effect, the holder of that office and any future holder of the office may continue to exercise the power or perform the duty.
- (7) Sections 39, 44 and 41 come into effect when the regulations that sections 39 and 41 anticipate are made in terms of section 64.
- (8) Regulations required by this Act must be made within a reasonable time of the Act coming into effect.