

**NORTH WEST PROVINCIAL LEGISLATURE MANAGEMENT  
AMENDMENT ACT 5 OF 2010**

[ASSENTED TO DE Wet]

[DATE 30-03-2011]

*(English text is the original text of this act)*

## NORTH WEST PROVINCIAL LEGISLATURE MANAGEMENT AMENDMENT BILL, 2010

To amend the North West Provincial Legislature Management Act 3 of 2007, so as to fully comply with the norms and standards for financial management of provincial legislatures as prescribed in the Financial Management of Parliament Act of 2009 (the Act)

### GENERAL EXPLANATORY NOTE:

[ ] Words in bold type square indicate omissions from existing enactments  
\_\_\_\_\_ Words underlined with a solid line indicate insertions into existing enactments.

**BE IT ENACTED** by the North West Provincial Legislature as follows:

1. With exception of the definitions sections and headings under sections 6 and 7, wherever in the Act reference is made to **[the Speaker]**, the latter shall be substituted by "**Executive Authority**", and the same shall apply to the reference to **[Secretary]**, which shall be substituted by "**Accounting Officer**".

2. The following subsection shall be added to section 6:

6 (7). The Executive Authority appoints the Accounting Officer after consultation with the Rules Committee

3. The following subsection shall be added to section 8:

8 (1) The **[ Secretary]** Accounting Officer must ensure that -

(f)-unauthorized, irregular and fruitless expenditure and other losses are prevented, and appropriate steps are taken where such expenditure has occurred;

(g)-disciplinary action is instituted against any employee of the Legislature who has allegedly committed an act of financial misconduct, and

(h)-when appropriate, criminal proceedings are instituted against any person who has allegedly committed an offence in terms of section 74.

4.The following new section shall be added, and shall be section 8A:

8A(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 one month after the Accounting Officer is employed and thereafter within one month after the start of each financial year;

(b)-specify performance standards linked to the objectives and targets of the Legislature's strategic plan and 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 substandard performance.

(3).The provisions of this Act conferring responsibilities on the Accounting Officer forms part of the performance agreement of the Accounting Officer.

(4).The annual assessment of the Accounting Officer's performance must take cognizance of the audit report on the annual financial statements of the Legislature.

5.The following amendments shall be effected to section 12:

(2) The appointment of:

(c) all other staff members shall be made by the **[Secretary]** Accounting Officer after consultation with the **[Speaker]** Executive Authority.

(4) The promotion, transfer or dismissal of any other employee of the Legislature shall be made by the **[Secretary]**Accounting Officer after consultation with the **[Speaker]** Executive Authority.

6.The following subsection shall be added to section 17:

17.(1). The **[Speaker]** Executive Authority must –

(c). table the strategic plan and annual performance plan in the Legislature.

7. The following amendments shall be effected to section 19:

19.(1).The **[the Secretary]** Accounting Officer must, within six months prior to the start of the financial year, prepare a draft annual performance plan for the Legislature and present it to the **[Speaker]** Executive Authority.

8. The following sections shall be deleted from the Act:

**[ 25(1) Funds appropriated for, but not spent in a particular financial year may be rolled over to a subsequent year subject to –**

**(a)the approval of the Speaker; and**

**(b) re-appropriation in the adjustment budget in terms of section 30 of the Public Finance Management Act.**

**(2) Any roll over must comply with the following conditions:**

**(a)savings in respect of funds that are a direct charge against the Provincial Revenue Fund may not be rolled over.**

**(b) unspent funds on payments for capital assets may be rolled over only to finalize projects or asset acquisitions still in progress.**

**(c) savings on transfers and subsidies may not be rolled over for purposes other than originally appropriated.**

**(d) savings on funds appropriated for personnel expenditure may not be rolled over.**

**(e) a maximum of five per cent of the Legislature's funds appropriated for goods and services may be rolled over.**

**(3) The Speaker must submit information on the roll-over of unspent funds to the Provincial Treasury on or before the last working day of April for inclusion in the appropriate adjustment budget.**

**(4) The Legislature's own revenues that are approved for in respect of a particular financial year, but not spent in that year, may not be rolled over but must be approved in the following financial year.]**

**[26.(1). Funds that are a direct charge against the Provincial Revenue Fund and that are unspent at the end of the financial year must be returned to the Provincial Revenue Fund.**

**(2). Appropriated funds that are unspent at the end of the financial year and are not rolled over to a subsequent financial year in accordance with section 24 must be returned to the Provincial Revenue Fund.]**

9. The above sections and their headings shall be substituted by the following heading and section, and the current section 27 shall be 26 and all other subsequent sections shall follow such numerical arrangement:

**Treatment of unspent funds**

25. (1) The Legislature is not required to return to the Provincial Revenue Fund 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 its use in subsequent financial years must be in accordance with section 21(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 years in accordance with section 21(1)(b).
- (4) Despite the provisions of subsection (1), funds retained by the Legislature must be re-appropriated within the next two financial years.

**Short title and commencement**

10. This Act shall be called North West Provincial Legislature Management Amendment Act, 2010, and shall come into operation upon publication in the government *gazette*.

The following Schedule shall be added to the Act as Schedule 1 and the current Schedule 1 shall be Schedule 2.

### **SCHEDULE 1**

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

- (1) The object of the Code is to enhance the confidence of the public and that of the Members of the Provincial Legislature in the integrity of the management of the Provincial Legislature. It applies to the Executive Authority of the Provincial Legislature and supplements the Legislature's Code of Ethics. It recognizes that in holding high public office for 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) fulfill 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 this 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 conflict arises, 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 or 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 of 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.

The following Schedule shall be added to the existing Schedules as Schedule 3:

### **SCHEDULE 3**

#### **Transitional Arrangements**

- (1) Until such time as any regulations that must be made in terms of the Principal Act and its amendments come into force, any policies, regulations or rules concerning the subject matter of such regulations remain in force.
  - (2) If, when this Act comes into effect there is no performance agreement for the Accounting Officer as required in terms of section 9, an agreement must be concluded within one month.
  - (3) Section 25 comes into effect at the start of the financial year after this Act comes into effect, or by decision of the Executive Authority.
  - (4) The North West Provincial Legislature shall remain on modified cash accounting system insofar as it relates to the following sections of the Principal Act: sections 19, 20, 21, 23, 24, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and 67 until the Executive Authority decides otherwise.
  - (5) Regulations required by this Act must be made within a reasonable time of the Act coming into effect.
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