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GENERAL NOTICE

NOTICE 702 OF 2013

INVITATION TO COMMENT ON DRAFT FINANCIAL MANAGEMENT OF PARLIAMENT AMENDMENT BILL

In accordance with National Assembly Rule 241, notice is hereby given that the Standing Committee on Finance intends to introduce the Financial Management of Parliament Amendment Bill to provide for the financial management of provincial legislatures and to amend certain other provisions in the Financial Management of Parliament Act, 2009 (Act No. 10 of 2009).

A copy of the draft Financial Management of Parliament Amendment Bill and a Memorandum setting out its objectives are included in the Schedule to this Notice in fulfilment of the requirements of Rule 241(1)(c) of the Rules of the National Assembly.

Interested persons, including institutions, are hereby invited to submit written comments on the draft Bill to the Secretary to Parliament by 12 July 2013. Written submission may be delivered by hand to the Office of the Secretary to Parliament, Old Assembly Building, Parliament Street, Cape Town; or mailed to the Secretary to Parliament, P O Box 15, Cape Town, 8000; or e-mailed to mbcoetzee@parliament.gov.za and copied to awicomb@parliament.gov.za. In all instances, please advise Mr A Wicomb, Committee Secretary, of the written submission at the following number: 021 – 403 3759.

25 June 2013

Mr A Wicomb

Committee Secretary: Standing Committee on Finance

REPUBLIC OF SOUTH AFRICA

FINANCIAL MANAGEMENT OF PARLIAMENT AMENDMENT BILL

(As introduced in the National Assembly (proposed section 76(1)); Draft Bill, the Memorandum setting out the objects of the Bill and prior notice of its introduction published in Government Gazette No. of 2013.)

(The English text is the official text of the Bill)

(STANDING COMMITTEE ON FINANCE)

[B —2013]

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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 deal with the financial management of provincial legislatures; to align the provisions dealing with the oversight mechanism with the Public Finance Management Act for purposes of reporting and auditing; to delete certain references to “provincial legislatures” in the Public Finance Management Act, 1999; and to provide for matters connected therewith.

Be it enacted by the Parliament of the Republic of South Africa, as follows:-

Amendment of 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—

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

“3. [Norms and standards for provincial legislatures] Application of Act to provincial legislatures”; and

(b) by the deletion, after item 73, of the reference to Schedule 1.

Substitution of Preamble of Act 10 of 2009

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

“PREAMBLE

Recognising—

that Parliament and provincial legislatures 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 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;**

Be it enacted by the Parliament of the Republic of South Africa, as follows: – ” .

Amendment of section 1 of Act 10 of 2009

3. Section 1 of the principal Act is hereby amended—
- (a) by the insertion of the following definition after the definition of “fruitless and wasteful expenditure”:
- “House’ means the National Assembly or the National Council of Provinces, as the case requires;”; and**
- (b) by the insertion of the following definition after the definition of “overspending”:

“Parliament’ means the National Assembly and the National Council of Provinces referred to in section 42(1) of the Constitution of the Republic of South Africa, 1996;”; and

- (b) by 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;”; and

“provincial legislature’ means a provincial legislature referred to in section 104 of the Constitution of the Republic of South Africa, 1996;”.

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

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 appropriate oversight mechanisms of Parliament]; **and**
- (e) to establish norms and standards for managing the financial affairs of provincial legislatures].”.**

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.]**

Application of 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;
- (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;
- (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;
- (e) a Member of Parliament, must be construed as a reference to a Member of the provincial legislature concerned;
- (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 the provincial annual budget concerned;
- (h) the National Treasury, must be construed as a reference to the provincial treasury concerned;
- (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;
- (k) sections 56 and 69 of the Constitution, must be construed as a reference to section 115 of the Constitution; and
- (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."

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

Amendment of section 17 of Act 10 of 2009

7. Section 17 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (2):

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

- (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.”

Amendment of section 58 of Act 10 of 2009

8. Section 58 of the principal Act is hereby amended ----

(a) by 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) by 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, 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) by 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) by 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

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

“59. The Accounting Officer must submit **[Parliament’s]** the annual report of Parliament, including the audited financial statements for that

financial year and the audit report on those statements, 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.”.

Amendment of section 60 of Act 10 of 2009

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

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

Amendment of section 62 of Act 10 of 2009

11. 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) —”.

Substitution of section 72 of Act 10 of 2009

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

“Repeal of legislation

72. This Act repeals—
(a) sections 31 and 39 of the Powers and Privileges of Parliament Act, 1963 (Act No. 91 of 1963); and

- (b) in the Public Finance Management Act--
- (i) **[the words “Parliament and” in] sections 3(1)(d) and 3(2);**
 - [(ii) subparagraph (a) of section 3(2);]**
 - (iii) section 13(1)(a); **[and]**
 - (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

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

“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 to Act 10 of 2009

14. Schedule 1 to the principal Act is hereby repealed.

Substitution of the long title of Act 10 of 2009

15. 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. ”.

Short title and commencement

- 16.** This Act is called the Financial Management of Parliament Amendment Act, 2013.

**MEMORANDUM ON THE OBJECTS OF THE
FINANCIAL MANAGEMENT OF PARLIAMENT AMENDMENT BILL OF 2013**

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 are 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.
- 1.3. On 20 September 2012 the National Assembly instructed the Standing Committee on Finance “to review the Financial Management of Parliament 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 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. OBJECTS OF THE BILL

The objects 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 streamline 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. FINANCIAL IMPLICATIONS FOR THE STATE

No substantial financial implications are envisaged in the implementation of the legislation.

4. PARLIAMENTARY PROCEDURE

- 4.1. The Legal Advisers of Parliament are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed by section 76(1) of the Constitution since 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.
- 4.2. 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).

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