

DRAFT OF 13 SEPTEMBER 2002

CHAPTER 1

INTERPRETATION, OBJECT, APPLICATION AND AMENDMENT OF ACT

Definitions

1. (1) In this Act, unless the context indicates otherwise—

“accounting authority” means an authority referred to in section 58;

“accounting officer” means the municipal official referred to in section 34;

“annual Division of Revenue Act” means the Act of Parliament which must be enacted annually in terms of section 214(1) of the Constitution;

“approved budget” means an annual or adjustments budget –

(a) approved by a municipal council; or

(b) adopted by a provincial executive following an intervention in terms of section 139 of the Constitution;

“Auditor-General” means the person appointed as Auditor-General in terms of section 193 of the Constitution, and includes a person exercising a power or performing a duty of the Auditor-General in terms of a delegation by the Auditor-General;

“basic municipal service” means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment;

“budget implementation plan” means a detailed plan prepared by a municipality for implementing its budget, and which must include –

(a) monthly plans and projections for revenue collection and capital expenditure;

(b) quarterly service delivery targets; and

(c) any other matters that may be prescribed;

“budget-related policy” means any policy of a municipality affecting or affected by the annual budget of a municipality, including –

(a) the tariffs policy which a municipality must adopt in terms of sections 74 of the Municipal Systems Act, read with section 105B of this Act;

DRAFT OF 13 SEPTEMBER 2002

(b) the rates policy which a municipality must adopt in terms of legislation regulating municipal property rates, read with section 105B of this Act; or

(c) the credit control and debt collection policy which a municipality must adopt in terms of section 96 of the Municipal Systems Act, read with section 105C of this Act;

“business plan”, in relation to a municipal entity, means a plan adopted by the municipal entity in terms of section 63;

“category”, in relation to municipalities, means a category A, B or C municipality referred to in section 155(1) of the Constitution;

“chief financial officer” means a person designated in terms of section 43(2)(a);

“controlling municipality” –

(a) in relation to a municipal entity under sole ownership control, means the municipality which has sole ownership control of the municipal entity; or

(b) in relation to a municipal entity under joint ownership control, means each of the municipalities which has joint ownership control of the municipal entity;

“councillor” means a member of a municipal council;

[“councillor for financial matters” means the councillor contemplated in section 31;

“court” means a court having jurisdiction;]

“creditor”, in relation to a municipality, means any person to whom money is owing by the municipality;

“debt” means—

(a) a monetary liability or obligation created by a financing agreement, note, debenture, bond or overdraft, or by the issuance of municipal debt instruments; or

(b) a contingent liability such as that created by guaranteeing a monetary liability or obligation of another;

“delegation”, in relation to a duty, includes an instruction or request to perform the duty;

“district municipality” means a municipality that has municipal executive and legislative authority in an area that includes more than one municipality, and which is described in section 155(1) of the Constitution as a category C municipality;

DRAFT OF 13 SEPTEMBER 2002

“Emergency Authority” means the Municipal Financial Emergency Authority established by section 88;

“Executive Officer”, in relation to the Emergency Authority, means the person appointed as the Executive Officer of that Authority;

“financial emergency” means a financial emergency within the meaning of Chapter 11;

“financial recovery specialist”, in relation to a municipality in a financial emergency, means a person appointed in terms of section 98 as the financial recovery specialist for that municipality;

“financial statements” means statements consisting of at least—

- (a) a statement of financial position;
- (b) a statement of financial performance;
- (c) a cash-flow statement;
- (d) any other statements that may be prescribed; and
- (e) any notes to these statements;

“financial year” means a year ending on 30 June;

“financing agreement” includes any loan agreement, lease, instalment purchase contract or hire purchase arrangement under which a municipality undertakes to pay the capital cost of property, plant or equipment over a period of time;

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

“governing board or body”, in relation to a municipal entity, means a board of directors or equivalent governing body appointed in terms of the legislation under which the municipal entity was established;

“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]** the annual Division of Revenue Act;

“investment”, in relation to funds of a municipality, means –

- (a) the placing on deposit of funds of a municipality with a financial institution; or
- (b) the acquisition of assets with funds of a municipality not immediately required, with the primary aim of preserving those funds;

DRAFT OF 13 SEPTEMBER 2002

“joint ownership control”, in relation to a municipal entity, means ownership control over the municipal entity which is exercised by a municipality together with another municipality;

“lender”, in relation to a municipality, means a person who provides debt finance to a municipality;

“local community” has the meaning assigned to it in section 1 of the Municipal Systems Act;

“local municipality” means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls, and which is described in section 155(1) of the Constitution as a category B municipality;

“long-term debt” means debt that is repayable over a period exceeding one year;

“mayor”, in relation to –

(a) a municipality with an executive committee, means the councillor elected as the mayor of the municipality in terms of section 48 of the Municipal Structures Act; or

(b) a municipality with an executive mayor, means the councillor elected as the executive mayor of the municipality in terms of section 55 of that Act;

“MEC for finance” means the member of the Executive Council of a province responsible for finance in that province;

“MEC for local government” means the member of the Executive Council of a province responsible for local government in that province;

[“metropolitan municipality” means a municipality that has exclusive executive and legislative authority in its area, and which is described in section 155(1) of the Constitution as a category A municipality;]

[“minimum essential municipal service” means a service, which, if not provided, would pose a threat to public health or safety;]

“Minister” means the Minister of Finance;

“municipal council” or “council” means **[a municipal council contemplated in section 157 of the Constitution]** the council of a municipality referred to in section 18 of the Structures Act;

“municipal debt instrument” means any note, bond, debenture or other evidence of indebtedness issued by a municipality, including dematerialised or electronic evidence of indebtedness intended to be used in trade;

DRAFT OF 13 SEPTEMBER 2002

“municipal entity” means—

(a) a company, co-operative, trust, fund or any other corporate **[entity] body** established in terms of any applicable national or provincial legislation and which operates under the ownership control of one or more municipalities;

[(b) any subsidiary of a company that is a municipal entity in terms of paragraph (a);] or

(c) a service utility established in terms of section 82(1)(c) of the Municipal Systems Act;

“municipality”, when referred to as—

(a) a corporate body, means a municipality as described in section 2 of the Municipal Systems Act; and

(b) a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

“municipal manager” means a person appointed in terms of section 82 (1) (a) or (b) of the Municipal Structures Act;

“municipal service” means a public service or facility which a municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community, either through an internal mechanism or by engaging an external mechanism, but excludes –

(a) the construction, provision or maintenance of infrastructure for the purpose of providing such a service or facility;

(b) the provision by an external mechanism of a service to assist the administration of a municipality in the exercise of its powers and functions;

“Municipal Structures Act” “means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“Municipal Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“National Treasury” means the National Treasury established by section 5 of the Public Finance Management Act;

“organised local government” means an organisation recognised in terms of section 2(1) of the Organised Local Government Act (Act No. 52 of 1997), to represent local government nationally or provincially;

DRAFT OF 13 SEPTEMBER 2002

“overspending”—

- (a) in relation to the budget of a municipality, means causing the operational or capital expenditure incurred by the municipality during a financial year to exceed the total amount appropriated in that year’s budget for its operational or capital expenditure, as the case may be;
- (b) in relation to a vote, means causing expenditure under the vote to exceed the amount appropriated for that vote, subject to section 39; or
- (c) in relation to expenditure under section 19, means causing expenditure under that section to exceed the percentage allowed in that section;

“ownership control”, in relation to a company, co-operative, trust, fund or any other corporate entity established in terms of any applicable national or provincial legislation, means the ability to exercise any of the following powers to govern the financial and operating policies of the entity in order to obtain benefits from its activities:

- (a) to appoint or remove at least the majority of the board of directors or equivalent governing body of that entity;
- (b) to appoint or remove that entity’s chief executive officer;
- (c) to cast at least the majority of the votes at meetings of the board of directors or equivalent governing body of that entity; or
- (d) to control at least the majority of the voting rights at a general meeting, in the case of a company, co-operative or other body having members;

“political office-bearer”, in relation to a municipality, means –

- (a) the speaker, executive mayor, deputy executive mayor, mayor, deputy mayor or a member of the executive committee referred to in the Municipal Structures Act; or
- (b) a councillor referred to in section 32E (1) of this Act;

“political structure [or functionary]”, in relation to a municipality, means—

- (a) the council of the municipality; or
- (b) any committee or other collective structure of a [**municipal council or other political structure**] municipality elected, designated or appointed in terms of a specific provision of the Municipal Structures Act; or

DRAFT OF 13 SEPTEMBER 2002

[(c) any councillor or other person elected, designated or appointed to a political office in terms of the Municipal Structures Act;]

“**prescribe**” means prescribe by regulation [**instruction or guideline**] in terms of section 106;

“**primary bank account**” means a bank account referred to in section 8 (1);

“**provincial department**” means a department listed in Schedule 2 of the Public Service Act, 1994, which falls within a provincial administration listed in Schedule 1 of that Act;

[(a) a provincial administration listed in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994); or

(b) a department within a provincial administration and listed in Schedule 2 to the Public Service Act, 1994 (Proclamation No. 103 of 1994)]

“**provincial treasury**” means a treasury established in terms of section 17 of the Public Finance Management Act;

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

“**recovery plan**” means a plan prepared and approved in terms of section 99;

“**security**” means a lien, pledge, mortgage, cession or other form of collateral intended to secure the interest of a creditor;

“**service delivery agreement**” means the same as in section 1 of the Municipal Systems Act;

“**short-term debt**” means a debt that is repayable over a period not exceeding one year;

“**sole ownership control**”, in relation to a municipal entity, means ownership control over the municipal entity which is exercised by a single municipality alone;

“**standards of generally recognised accounting practice**” means an accounting practice complying with standards applicable to municipalities or municipal entities and issued in terms of the Public Finance Management Act;

“**this Act**” includes regulations made [**and instructions issued**] in terms of section 106 or 115;

“**unauthorised expenditure**”, in relation to a municipality, means an expenditure for which no provision is made in the budget of the municipality, and includes—

(a) overspending the budget;

(b) overspending a vote; or

DRAFT OF 13 SEPTEMBER 2002

(c) expenditure unrelated to the department or functional area covered by the vote;

“**vote**” means—

(a) one of the main segments into which a budget of a municipality is divided for the appropriation of money for the different departments or functional areas of the municipality; and

(b) which specifies the total amount that is appropriated for the purposes of the department or functional area concerned.

(2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended

Object of Act

2. The object of this Act is to secure transparency, accountability and sound management of the revenue, expenditure, assets and liabilities of the local government institutions to which this Act applies.

Local government institutions to which Act applies

3. (1) This Act applies to—

(a) municipalities; and

(b) municipal entities.

(2) In the event of any inconsistency between this Act and any other legislation in effect when this Act takes effect concerning financial management of municipalities or municipal entities, this Act prevails.

Amendments to Act

DRAFT OF 13 SEPTEMBER 2002

4. Draft national legislation directly or indirectly amending this Act, or providing for the enactment of subordinate legislation that may conflict with this Act, may be introduced in Parliament—

- (a) by the Minister only after the Minister has consulted the Financial and Fiscal Commission; or
- (b) only after the Minister and the Financial and Fiscal Commission [has] have been consulted in writing on the contents of the draft legislation, and [has] have responded in writing.

CHAPTER 2

SUPERVISION OVER LOCAL GOVERNMENT FINANCE MANAGEMENT

General functions of National Treasury

5. (1) The National Treasury must—

- (a) fulfil its responsibilities in terms of Chapter 13 of the Constitution, the Public Finance Management Act and this Act;
- (b) promote the object of this Act as set out in section 2 in terms of –
 - (i) the framework of co-operative government as set out in Chapter 3 of the Constitution; and
 - (ii) the National Treasury's functions in terms of the Public Finance Management Act and the Intergovernmental Fiscal Relations Act, 1997 (Act No. ...of 1997), to coordinate intergovernmental financial and fiscal relations; and
- (c) enforce compliance with the measures established in terms of section 216(1) of the Constitution, including those established in terms of this Act.

(2) To the extent necessary to perform its functions in terms of this Act, the National Treasury may—

- (a) monitor the budgets of municipalities to establish whether they—

DRAFT OF 13 SEPTEMBER 2002

- (i) are consistent with the national government's fiscal [**policy framework**] and macro-economic policy; and
- (ii) comply with [**sections 16 and 20**] Chapter 4;
- (b) promote good budget management by municipalities, and for this purpose monitor expenditure and revenue of municipalities [**to establish whether expenditure and revenue remain within budget**];
- [(c) **prescribe uniform treasury norms and standards for—**
 - (i) **municipalities, including financial management in municipalities; and**
 - (ii) **municipal entities, including financial management in municipal entities;**]
- [(d) **determine annually a growth factor for the budgets of municipalities as envisaged in section 16(1)(d);**]
- (e) monitor and assess compliance by municipalities and municipal entities with—
 - (i) this Act; and
 - (ii) any applicable standards of generally recognised accounting practice and uniform expenditure and revenue classification systems;
- [(f) **assist municipalities and municipal entities in building their capacity for efficient, effective and transparent financial management;**]
- (g) [**review**] investigate any system of financial management and internal control in any municipality and recommend improvements;
- (h) take appropriate steps [**including the stopping of funds to a municipality or municipal entity in terms of section 216(2) of the Constitution, if the**] if a municipality or municipal entity commits a [serious or persistent material] breach of this Act, including the stopping of funds to a municipality in terms of section 216(2) of the Constitution if the municipality, or a municipal entity under the sole or joint ownership control of the municipality, commits a serious or persistent material breach of any measures referred to in that section; and
- (i) take any other appropriate steps necessary to perform its functions effectively.

DRAFT OF 13 SEPTEMBER 2002

[(3) Before the National Treasury stops the transfer of funds to a municipality or municipal entity in terms of subsection (1)(h), it must consult—

- (a) the head of the department responsible for making the transfer; and**
- (b) the Director-General of the national department charged with responsibility for local government.]**

(3) The functions assigned to the National Treasury in terms of this Act are additional to those assigned to the Treasury in terms of the Public Finance Management Act in relation to municipalities.

Delegations by National Treasury

6. (1) The Minister may delegate any of the powers or duties assigned to the National Treasury in terms of this Act to—

- (a) the Director-General of the National Treasury; or**
- [(b) the Director-General of the national department charged with responsibility for local government, as the Minister and the Cabinet member responsible for that department may agree;**
- [(c) a provincial treasury, as the Minister and the MEC for finance in the province concerned may agree; or]**
- (d) [the head of a provincial department] the MEC responsible for a provincial department, as the Minister and the [MEC responsible for that department] Premier of the province may agree.**

(1A) The Minister may not delegate the National Treasury's power in terms of section 5(2)(h) to stop funds to a municipality.

(2) A delegation in terms of subsection (1)—

- (a) must be in writing;
- (b) is subject to any limitations or conditions that the Minister may impose;

DRAFT OF 13 SEPTEMBER 2002

- (c) may, subject to such limitations or conditions, authorise the Director-General of the National Treasury [**the Director-General of the relevant national department the provincial treasury or the head of**] or the MEC responsible for the relevant provincial department to sub-delegate a delegated power or duty [to (i) an official, or the holder of a specific post, in the public service];
- [(ii) **the municipal manager of a municipality; or**
(iii) **the accounting authority of a municipal entity;**] and
- (d) does not divest the National Treasury of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(3) The Minister may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

CHAPTER 3

MUNICIPAL REVENUE

Part 1: Municipal bank accounts

Opening of bank accounts

7. (1) Every municipality must open and maintain [**bank accounts**] at least one bank account in the name of the municipality[, **into which all money received by the municipality must be paid promptly**].

(2) All money received by a municipality must be paid into its bank account or accounts promptly and in accordance with this Chapter and any requirements that may be prescribed.

(3) A municipality may not open a bank account –
(a) abroad; [**or**]

DRAFT OF 13 SEPTEMBER 2002

- (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 municipality.

(3) Money may be withdrawn from a municipal bank account only in terms of section 11 (1), read with sections 11A, 23C (3) and 23F.

[Bank accounts designated for intergovernmental allocations

8. (1) One of the bank accounts opened by a municipality to be known as the accredited bank account must be designated for the receipt of all allocations made to the municipality—

- (a) in terms of the annual Division of Revenue Act;**
- (b) by the provincial government; and**
- (c) by other municipalities.**

(2) A municipality—

- (a) must deposit all allocations mentioned in subsection (1) into its accredited bank account; and**
- (b) may change its accredited bank account during a financial year only with the written consent of the National Treasury.]**

Primary bank accounts

8. (1) A municipality must have a primary bank account. If a municipality –

- (a) has only one bank account, that account is its primary bank account; or**
- (b) has more than one bank account, it must designate one of those bank accounts as its primary bank account.**

(2) The following moneys must be paid into a municipality's primary bank account:

- (a) the municipality's share of the local government equitable share;**

DRAFT OF 13 SEPTEMBER 2002

- (b) all allocations to the municipality –
 - (i) in terms of the annual Division of Revenue Act; and
 - (ii) by the provincial government from provincial revenue, including from provincial public entities;
- (c) all transfers, grants and agency payments to the municipality by another municipality or an organ of state in another sphere; and
- (d) any other moneys as may be prescribed.

(3) If a municipality which has more than one bank account wants to designate another of its bank accounts as its primary bank account, it may do so only after informing the National Treasury in writing at least 30 days before effecting the change.

(4) A municipality must ensure that all money referred to in subsection (2) is paid into its primary bank account.

(5) No organ of state in the national, provincial or local sphere of government may transfer money referred to in subsection (2) to a municipality except through the municipality's primary bank account.

Bank account details to be submitted to Auditor-General

9. (1) The accounting officer of a municipality must submit to the Auditor-General, in writing –

- (a) within 90 days after the municipality has opened a new bank account, the name of the bank where the account has been opened, and the type and number of the account; and
- (b) annually before the start of a financial year, the name of each bank where the municipality holds a bank account, and the type and number of each account.

(2) The Auditor-General must keep a list of all bank accounts of each municipality, and make such list available to the National Treasury on request.

DRAFT OF 13 SEPTEMBER 2002

Control of municipal bank accounts

- 10.** (1) The **[municipal manager] accounting officer of a municipality** —
- (a) must administer all the municipality's bank accounts, including a bank account referred to in section 11A;
 - (b) is accountable to the municipal council for the municipality's bank accounts; and
 - (c) must enforce compliance with sections 7, 8 and 11.

(2) **[A municipal manager]** The accounting officer may delegate the duties contemplated in subsection (1)(b) to the municipality's chief financial officer only.

Withdrawals from municipal bank accounts

- 11.** (1) Only the **[municipal manager] accounting officer** or the chief financial officer of a municipality, or any other senior official of the municipality acting on the written authority of the **[municipal manager] accounting officer**, may withdraw money or authorise the withdrawal of money from any of the municipality's bank accounts, and may do so only—
- (a) for expenditure appropriated in **[terms of a] an approved budget [approved by the municipal council]** except in cases where sections 11A, 23C (3) and 23F apply;
 - (b) to pay over to **[other entities or agencies money collected by the municipality on behalf of such entity or agency]** a person or organ of state money received by the municipality on behalf of that person or organ of state, including –
 - (i) money collected by the municipality on behalf of that person or organ of state by agreement; or
 - (ii) any insurance or other payments received by the municipality for that person or organ of state;
 - (c) to refund money incorrectly paid into **[the bank accounts] a bank account;**
 - (d) to refund guarantees, sureties and security deposits;
 - (e) within a prescribed framework, for cash management and investment purposes in accordance with section 12 **[and within any framework that may be prescribed in terms of that section];** or

DRAFT OF 13 SEPTEMBER 2002

- (f) within a prescribed framework, for [such other purposes including emergency purposes as may be prescribed] –
- (i) emergency purposes, as approved by the mayor in writing;
 - (ii) other unforeseen and unavoidable purposes, as approved by the mayor in writing;
- or
- (iii) such other purposes as may be prescribed.

(1A) The accounting officer may not authorise a senior official to withdraw money or to authorise the withdrawal of money from the municipality's primary bank account if the municipality has a primary bank account which is separate from its other bank accounts. Any other authorisation in terms of subsection (1) to a senior official to withdraw money or to authorise the withdrawal of money from a bank account must be in accordance with a framework as may be prescribed.

(2) Money may be withdrawn from a bank account in terms of subsection (1)(b), (c), (d), (e) or (f) without appropriation in **[terms of a] an approved budget [approved by the municipal council].**

- (3) The **[municipal manager] accounting officer** must—
- (a) within 30 days after the end of each quarter, table in the municipal council [on at least a quarterly basis] a consolidated report of all withdrawals made in terms of subsection (1)(b), (c), (d), (e) or (f) during that quarter; and
 - (b) make the report available for public inspection in the prescribed manner.

Relief, charitable and trust funds

11A. (1) No political structure or office-bearer of a municipality may set up a relief, charitable or trust fund except in the name of the municipality.

DRAFT OF 13 SEPTEMBER 2002

(2) Money received by the municipality for the purpose of a relief, charitable or trust fund set up by or in the name of the municipality, may be paid into a separate bank account opened for this purpose by the municipality.

(3) Money in such an account may be withdrawn from the account without appropriation in an approved budget, but only –

(a) by or on the written authority of the accounting officer acting in accordance with decisions of the municipal council; and

(b) for the purposes for which, and subject to any conditions on which, the fund was established or the money in the fund was donated.

Part 2: Cash, investment and asset management

Cash management and investments

12. (1) The National Treasury [**must**] may prescribe a framework within which municipalities—

(a) must conduct their cash management and investments; and

(b) [**may**] must invest [**or lend**] money not immediately required.

(2) A municipality must establish appropriate and effective cash management and investment [**arrangements**] policy, and these must be in accordance with any framework that may be prescribed in terms of subsection (1).

(3) A bank [**that has opened an account for a municipality must promptly**] where a municipality at the end of a financial year holds a bank account, or held a bank account at any time during a financial year, must—

(a) within 30 days after the end of that financial year notify the [**National Treasury**] Auditor-General, in writing, of [**such account when the account is opened**] such bank account, including the type and number of the account; and

(b) disclose information regarding the account when so requested by the National Treasury [**the relevant provincial treasury**] or the Auditor-General.

DRAFT OF 13 SEPTEMBER 2002

(4) **[An institution with which a municipality has invested money]** A bank, insurance company or other financial institution which at the end of a financial year holds, or at any time during a financial year held, an investment for a municipality must—

- (a) within 30 days after the end of that financial year, notify the **[National Treasury Auditor-General]**, in writing, **[that it holds money as an investment for the municipality]** of that investment; and
- (b) promptly disclose information regarding the investment when so requested by the National Treasury **[the relevant provincial treasury]** or the Auditor-General.

Disposal of capital assets

13. (1) A municipality may not transfer ownership **[with or without consideration,]** as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide **[a]** the minimum [essential] level of basic municipal services.

(2) A municipality may transfer ownership or otherwise dispose of an asset other than one contemplated in subsection (1), but only after the council, in a meeting open to the public—

- (a) on reasonable grounds decided that the asset is not needed to provide **[a]** the minimum [essential] level of basic municipal services; and
- (b) considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

(3) A decision by a municipal council that a specific capital asset is not needed to provide **[a]** the minimum [essential] level of basic municipal services, may not be reversed by the municipality after that asset has been sold, transferred or otherwise disposed of.

DRAFT OF 13 SEPTEMBER 2002

(4) A municipal council may delegate to the accounting officer of the municipality its power to make the determinations referred to in subsection (2) (a) and (b) in respect of movable assets below a value determined by the council.

(5) Any transfer of ownership of an asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the procurement and asset disposal policy which the municipality must adopt in terms of section 105A. The public must be given at least 30 days' prior notice of any sale of an asset.

(6) This section does not apply to the transfer of a capital asset to another municipality or to a municipal entity or national or provincial organ of state.

Acquisition and disposal of minority interests in companies and other entities

- 14.** A municipality [**a municipal entity or a subsidiary of a municipal entity**] may—
- (a) acquire or hold a minority interest in any company or other corporate entity, but only if the other interests are held by—
- (i) another municipality or municipalities;
 - (ii) a municipal entity or entities; or
 - (iii) a national or provincial organ of state; or
 - [(ii) the national or a provincial government;**
 - (iii) a municipal entity over which that municipality or that other municipality or any of those other municipalities exercise sole or joint ownership control;**
 - or**
 - (iv) a subsidiary of a municipal entity contemplated in subparagraph (iii); or]**
- (b) dispose of any interest which it holds in terms of paragraph (a) in a company or other corporate entity, but only to—
- (i) another municipality;
 - (ii) a municipal entity or entities; or
 - (iii) a national or provincial organ of state.

DRAFT OF 13 SEPTEMBER 2002

- [(ii) the national or a provincial government;
- (iii) a municipal entity contemplated in paragraph (a)(iii). or
- [(iv) a subsidiary of a municipal entity contemplated in paragraph (a)(iii)]

CHAPTER 4

MUNICIPAL BUDGETS

Appropriation of funds for expenditure

15. A municipality may, subject to the other provisions of this Chapter, incur expenditure only –

- (a) in terms of the annual or an adjustment budget approved by the council of the municipality; and
- (b) within the limits of the amounts appropriated for the different votes in an approved budget.

Annual budgets

16. (1) The council of a municipality must for each financial year approve an annual budget for the municipality before the start of the financial year.

(2) In order to comply with subsection (1) the mayor of a municipality must table the annual budget at a council meeting at least 120 days before the start of the financial year to which the budget relates

Contents of annual budgets and supporting documents

17. (1) An annual budget must be a schedule in the prescribed format –

- (a) setting out realistically anticipated revenue for the financial year from each revenue source;

DRAFT OF 13 SEPTEMBER 2002

- (b) appropriating expenditure for the financial year under the different votes of the municipality;
 - (c) setting out indicative revenue per revenue source and projected expenditure by vote for the two financial years following the financial year to which the budget relates;
 - (d) setting out –
 - (i) estimated revenue and expenditure by vote for the current financial year; and
 - (ii) actual revenue and expenditure by vote for the financial year preceding the current year; and
 - (e) a statement containing any other information required by section 215 (3) of the Constitution.
- (2) An annual budget must be divided into a capital and an operating budget.
- (3) When a budget is tabled in terms of section 16 (2), it must be accompanied by the following documents:
- (a) draft resolutions –
 - (i) approving the budget;
 - (ii) levying any rates and other taxes, and setting any tariffs, as may be required for the financial year to which the budget relates; and
 - (iii) approving the budgets for the relevant financial year of each municipal entity under the sole or joint ownership control of the municipality;
 - (b) measurable performance objectives for each vote;
 - (c) a projection of cash flow for the relevant financial year by revenue source and vote, broken down per month;
 - (d) any proposed amendments to the municipality's integrated development plan following the annual review of the integrated development plan in terms of section 34 of the Municipal Systems Act;
 - (e) any proposed amendments to the budget-related policies of the municipality;
 - (f) particulars of the municipality's investments;

DRAFT OF 13 SEPTEMBER 2002

- (g) particulars of all allocations by the municipality to other municipalities, municipal entities and other organs of state;
- (h) the cost to the municipality of the salaries, allowances and benefits of –
 - (i) political office-bearers and councillors of the municipality; and
 - (ii) the municipal manager, the chief financial officer and all managers of the municipality referred to in section 56 of the Municipal Systems Act; and
- (i) any other supporting documentation as may be prescribed.

Funding of expenditures

- 18.** (1) The budget may only be funded from –
- (a) realistically anticipated revenues to be collected;
 - (b) accumulated funds from previous years' surpluses not committed for other purposes; and
 - (c) borrowed funds, but for the capital budget only.
- (2) Revenue projections in the budget must be realistic, taking into account –
- (a) collection levels to date for the current financial year; and
 - (b) actual revenue collected in previous financial years.

Capital projects

- 19.** (1) A municipality may spend money on a capital project only if –
- (a) the project, including the total cost, has been approved by the council;
 - (b) money has been appropriated in the capital budget; and
 - (c) the sources of funding have been considered.
- (2) Before approving a capital project involving construction, the council of a municipality must consider –
- (a) the projected cost over all financial years until the project is completed; and
 - (b) the future operational costs and revenue on the project, including tax or tariff implications.

DRAFT OF 13 SEPTEMBER 2002

- (3) A municipal council may approve a capital project in terms of subsection (1) (a) –
- (a) at any time before, during or after the budget process; or
 - (b) as part of a long term capital programme.

Matters to be prescribed

20. The National Treasury –

- (a) must prescribe the form of the annual budget; and
- (b) may prescribe –
 - (i) the form of resolutions and supporting documentation relating to the annual budget;
 - (ii) the number of years preceding and following the financial year to which the budget relates for which revenue and expenditure history or projections must be shown;
 - (iii) inflation projections to be used with regard to the budget;
 - (iv) uniform norms and standards aimed at ensuring that municipal budgets do not undermine national economic policy objectives, including measures limiting –
 - (aa) the rate of total revenue growth or the rate of revenue growth from particular sources; and
 - (bb) the rate of growth of operating expenditure within particular categories of expenditure; and
 - (v) uniform norms and standards aimed at promoting transparency and expenditure control.

Budget preparation process

21. (1) The mayor of a municipality must—

- (a) co-ordinate the processes for preparing the annual budget and for reviewing the municipality's integrated development plan and budget-related policies to ensure that the

DRAFT OF 13 SEPTEMBER 2002

budget, the integrated development plan and the budget-related policies are mutually consistent and credible;

- (b) at least ten months before the start of the financial year to which the budget relates, table in the municipal council a time schedule outlining the key deadlines for –
- (i) the preparation, tabling and approval of the budget;
 - (ii) the annual review of the integrated development plan in terms of section 34 of the Municipal Systems Act and the budget-related policies;
 - (iii) the tabling and adoption of any amendments to the integrated development plan and the budget-related policies; and
 - (iv) any consultative processes forming part of the processes referred to in subparagraphs (i), (ii) and (iii).
- (2) When preparing the budget, the mayor must —
- (a) take into account the municipality’s integrated development plan;
 - (b) take all reasonable steps to ensure that the municipality revises the integrated development plan in terms of the Municipal Systems Act, taking into account realistic revenue and expenditure projections for future years;
 - (c) consult –
 - (i) the relevant district municipality, in the case of a local municipality;
 - (ii) the relevant local municipalities, in the case of a district municipality;
 - (iii) any municipal entities under the sole or joint ownership control of the municipality; and
 - (iv) the National Treasury and any other interested provincial and national organs of state as may be prescribed; and
 - (d) provide on request any information relating to the budget to the National Treasury, a prescribed national or provincial organ of state, or another municipality affected by the budget.

DRAFT OF 13 SEPTEMBER 2002

Publication of annual budget

22. Immediately after an annual budget is tabled in a municipal council, the accounting officer of the municipality must –

- (a) make the annual budget and the documents referred to in section 17 (3) available to the public on the municipality’s website and by way of printed copies at the municipality’s head and branch offices and libraries;
- (b) disseminate the substance of the annual budget and those documents to the local community through appropriate mechanisms, processes and procedures in terms of Chapter 4 of the Municipal Systems Act; and
- (c) submit the annual budget to the National Treasury in both printed and electronic formats, and in either format to any prescribed national or provincial departments, agencies and regulators, and to other municipalities affected by the budget.

Consultations on tabled budgets

23. (1) When the annual budget has been tabled, the municipal council must consider the views of –

- (a) the local community obtained through appropriate mechanisms, processes and procedures in terms of Chapter 4 of the Municipal Systems Act; and
- (b) the National Treasury, other provincial and national departments, agencies and regulators and municipalities which made submissions on the budget.

(2) After considering all budget submissions, the council must give the mayor an opportunity –

- (a) to respond to the submissions; and
- (b) if necessary, to revise the budget and table amendments for consideration by the council.

(3) The mayor must table the revised budget at least 30 days before the start of the financial year to which the budget relates.

DRAFT OF 13 SEPTEMBER 2002

(4) The National Treasury may issue guidelines on the manner in which municipal councils should process their annual budgets, including guidelines on the formation of a committee of the council to consider the budget and to hold public hearings.

Approval of annual budgets

23A. (1) The municipal council must consider an annual budget for approval at least 30 days before the start of the financial year to which the budget relates.

(2) An annual budget –

(a) must be approved before the start of the financial year to which it relates;

(b) is approved by the adoption by the council of the resolution referred to in section 17 (3)

(a) (i); and

(c) must be approved together with the adoption of resolutions –

(i) levying any property rates for the financial year to which the budget relates;

(ii) levying any other taxes for the financial year;

(iii) setting any tariffs for municipal services for the financial year;

(iv) approving measurable performance objectives for each vote;

(v) approving any changes to the integrated development plan; and

(vi) approving any changes to budget-related policies.

Failure to approve budget before start of financial year

23B. (1) If a municipal council fails to approve an annual budget as required by section 23A (2), the council must reconsider the budget and again vote on the budget, or on another version thereof, within seven days of the council meeting that failed to approve the budget.

(2) The process provided for in subsection (1) must be repeated until a budget is approved.

(3) If a municipality has not approved an annual budget by the first day of the

DRAFT OF 13 SEPTEMBER 2002

financial year, the mayor must immediately comply with section 32C.

Consequences of failure to approve budget before start of financial year

23C. (1) If a municipal council has not approved an annual budget by the start of the financial year, the provincial executive may intervene in the municipality and take steps in terms of section 139 of the Constitution, which may include –

- (a) the approval by the provincial executive of a budget for the municipality; and
- (b) dissolution of the council in terms of section 34 (3) (b) of the Municipal Structures Act.

(2) When approving a budget for a municipality in terms of subsection (1) (a), the provincial executive is not bound by any provision relating to the budget process applicable to a municipality in terms of this Act or other legislation. Such a budget may after the intervention has ended be replaced by a budget approved by the council, provided the provisions of this Chapter relating to annual budgets are substantially complied with.

(3) Until a budget for the municipality is approved in terms of section 23A or subsection (1) (a) of this section, funds for the requirements of the municipality may, with the approval of the MEC for local government in the province, be withdrawn from the municipality's bank accounts in accordance with subsection (4).

(4) Funds withdrawn from a municipality's bank accounts in terms of subsection (3) –

- (a) may be used only to defray current expenditure in connection with votes for which funds were appropriated in the last approved annual budget or adjustments budget; and
- (b) may not –
 - (i) during any month, exceed eight per cent of the total amount appropriated in the last approved annual budget for current expenditure, which percentage must be scaled down proportionately if revenue flows are not at least at the same level as the previous financial year; and

DRAFT OF 13 SEPTEMBER 2002

(ii) exceed the amount actually available.

(5) The funds provided for in subsection (3) are not additional to funds appropriated for the relevant financial year, and any funds withdrawn in terms of subsection (4) must be regarded as forming part of the funds appropriated in a subsequently approved annual budget for that financial year.

Non-compliance with provisions of this Chapter

23D. (1) The mayor of a municipality must upon becoming aware of any impending non-compliance by the municipality of any provisions of this or any other Act pertaining to the tabling or approval of an annual budget, or the compulsory consultation processes, inform the MEC for local government in the province, in writing, of such impending non-compliance.

(2) If the impending non-compliance pertains to a time provision other than section 16 (1), the MEC for local government may, on application by the mayor and on good cause shown, extend any time limit or deadline contained in that provision, provided that no such extension may compromise compliance with section 16 (1). An MEC for local government must –

- (a) exercise the power contained in this subsection in accordance with a prescribed framework; and
- (b) promptly notify the National Treasury of any extensions given in terms of this subsection, together with the name of the municipality and the reasons.

(3) The mayor of a municipality must upon becoming aware of any non-compliance by the municipality of a provision of this Chapter, inform the MEC for local government and the National Treasury, in writing, of –

- (a) such non-compliance; and
- (b) any remedial measures the municipality intends to put in place to avoid a recurrence.

DRAFT OF 13 SEPTEMBER 2002

(4) Non-compliance with a provision of this Chapter or the Municipal Systems Act pertaining to the budget process or the approval of a budget-related policy does not affect the validity of an annual or adjustments budget.

(5) The provincial executive may intervene in terms of section 139 of the Constitution if a municipality cannot or does not comply with a provision of this Chapter, including a provision relating to process.

Municipal adjustments budgets

23E. (1) A municipality may revise an approved annual budget through an adjustments budget.

- (2) An adjustments budget —
- (a) must promptly adjust the revenue and expenditure estimates downwards if there is material under-collection of revenue during the year;
 - (b) may appropriate additional revenues that have become available, over and above those anticipated in the annual budget, but only to revise or accelerate spending programmes already budgeted for;
 - (c) may authorise unforeseeable and unavoidable, or emergency, expenditure recommended by the mayor of the municipality, within a prescribed framework;
 - (d) may authorise the utilisation of projected savings in one vote towards spending under another vote;
 - (e) may authorise spending of funds that were unspent at the end of the previous financial year, where the under-spending could not reasonably have been foreseen at the time the annual budget was approved by the council;
 - (f) may correct any errors in the annual budget; and
 - (g) may provide for any other expenditure within a prescribed framework.

(3) An adjustments budget must be in a prescribed form.

DRAFT OF 13 SEPTEMBER 2002

(4) Only the mayor may table an adjustments budget in the municipal council, but an adjustments budget in terms of subsection (2) (b) to (g) may only be tabled in accordance with any prescribed limitations as to timing or frequency.

(5) When an adjustments budget is tabled, it must be accompanied by –

- (a) an explanation how the adjustments budget affects the annual budget;
- (b) a motivation of any material changes to the annual budget; and
- (c) any other supporting documentation that may be prescribed.

(6) Before an adjustments budget is tabled or approved, the municipality must –

- (a) follow such consultation processes as the municipal council may determine subject to any prescribed requirements; and
- (b) consider the future impact of any increased spending.

(7) Sections 22 (a) and (b) and 23 (4) apply in respect of an adjustments budget, and in such application a reference in those sections to an annual budget must be read as a reference to an adjustments budget.

Unforeseen and unavoidable expenditure

23F. (1) The mayor of a municipality may in exceptional circumstances authorise unforeseeable and unavoidable expenditure for which no provision was made in an approved budget.

(2) Any such expenditure –

- (a) must be in accordance with any framework that may be prescribed;
- (b) may not exceed an amount determined in accordance with a prescribed formula;
- (c) must be reported by the mayor to the municipal council at its next meeting; and
- (d) must be appropriated in an adjustments budget.

DRAFT OF 13 SEPTEMBER 2002

(3) If such adjustments budget is not passed within 60 days after the expenditure was incurred the expenditure is unauthorised and section 23G applies.

Unauthorised, irregular expenditure and fruitless and wasteful expenditure

23G. (1) Without limiting liability in terms of the common law or other legislation—

- (a) a political office-bearer of a municipality is liable for unauthorised, irregular or fruitless and wasteful expenditure if that office-bearer ignored the advice of the accounting officer of the municipality that the expenditure would lead to unauthorised, irregular or fruitless and wasteful expenditure and instructed the accounting officer to incur the expenditure;
- (b) the accounting officer is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer, subject to subsection (3);
- (c) any person who deliberately or negligently committed, made or authorised an irregular expenditure, is liable for that expenditure; or
- (d) any person who deliberately or negligently made or authorised a fruitless and wasteful expenditure is liable for that expenditure.

(2) A municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure—

- (a) in the case of unauthorised expenditure, is—
 - (i) authorised in an adjustments budget; or
 - (ii) certified by the municipal council as irrecoverable and written off by the council;

and
- (b) in the case of irregular or fruitless and wasteful expenditure, is certified by the council as irrecoverable and written off by the council.

(3) If the accounting officer becomes aware that the council, the mayor or the executive committee of the municipality, as the case may be, has taken a decision which, if implemented, is likely to result in unauthorised, irregular or fruitless and wasteful expenditure, the accounting officer is not liable for any ensuing unauthorised, irregular or fruitless and wasteful expenditure provided that the accounting officer has informed the council, the mayor or

DRAFT OF 13 SEPTEMBER 2002

the executive committee, in writing, that the expenditure is likely to be unauthorised, irregular or fruitless and wasteful expenditure.

(4) The accounting officer must promptly inform the speaker of the council, the MEC for local government in the province and the Auditor-General, in writing, of—

(a) any unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality; and

(b) the steps that have been taken—

(i) to recover or rectify such expenditure; and

(ii) to prevent a recurrence of such expenditure.

(5) The writing off in terms of subsection (2) of any unauthorised, irregular or fruitless and wasteful expenditure as irrecoverable, is no excuse in criminal or disciplinary proceedings against a person charged with the commission of an offence or a breach of this Act relating to such unauthorised, irregular or fruitless and wasteful expenditure.

(6) The accounting officer must report to the South African Police Service all cases of alleged—

(a) irregular expenditure that constitute a criminal offence; and

(b) theft and fraud that occurred in the municipality.

(7) The council of a municipality must take all reasonable steps to ensure that all cases referred to in subsection (6) are reported to the South African Police Service if—

(a) the accounting officer fails to comply with that subsection; or

(b) the charge is against the accounting officer.

(8) Any action taken against an accounting officer because of that accounting officer's compliance with subsection (4) or (6), is an unfair labour practice for the purposes of the Labour Relations Act, 1995 (Act No. 66 of 1995).

DRAFT OF 13 SEPTEMBER 2002

(9) The National Treasury may regulate the application of this section by regulation in terms of section 106.

CHAPTER 4A **CO-OPERATIVE GOVERNMENT**

Capacity building

23H. (1) The national and provincial governments must by agreement assist municipalities in building their capacity for efficient, effective and transparent financial management.

(2) Despite subsection (1), a municipality and its political structures, office-bearers and officials remain responsible for complying with this Act, and any lack or inadequacy of performance by the national and provincial governments to fulfil their obligations in terms of subsection (1) does not constitute a ground for justifying non-compliance with this Act by a municipality or its political structures, office-bearers or officials.

Promotion of co-operative government by national and provincial institutions

23I. National and provincial departments and public entities must –

(a) in their fiscal and financial relations with the local sphere of government promote co-operative government in accordance with Chapter 3 of the Constitution;

(b) promptly meet their financial commitments towards municipalities;

(c) provide timely information and assistance to municipalities to enable municipalities –

(i) to plan properly, including in developing and revising their integrated development plans; and

(ii) to prepare their budgets in accordance with the processes set out in Chapter 4 of this Act; and

DRAFT OF 13 SEPTEMBER 2002

- (d) comply with the Public Finance Management Act and the annual Division of Revenue Act to the extent that those Acts regulate intergovernmental relations with the local sphere of government.

National and provincial allocations to municipalities

23J. (1) In order to enable municipalities to include allocations from revenue raised nationally, and from provincial revenue, in their budgets and to plan effectively for the spending of such allocations, the accounting officer of a national or provincial department and the accounting authority of a national or provincial public entity responsible for the transfer of any such allocation to a municipality must –

a) by no later than 20 January of a year, or such other date as may be prescribed, notify the municipality of –

(i) any adjustments in the projected amount of any allocation to be transferred to the municipality during each of the next three financial years; and

(ii) the proposed arrangements as to the time when the transfer will be effected for the next financial year.

(2) In order to enable the relevant treasury to prepare its annual budget and supporting documents, the accounting officer of a national or provincial department and the accounting authority of a national or provincial public entity responsible for the transfer of any allocations referred to in subsection (1), must –

(a) by no later than 20 January of a year, or such other date as may be prescribed, notify the relevant treasury of the projected amount of any allocation proposed to be transferred to municipalities during each of the next three financial years.

Promotion of co-operative government by municipalities

DRAFT OF 13 SEPTEMBER 2002

23K. Municipalities must –

- (a) in their fiscal and financial relations with the national and provincial spheres of government promote co-operative government in accordance with Chapter 3 of the Constitution;
- (b) provide budgetary and other financial information to relevant municipalities and national and provincial organs of state; and
- (c) promptly meet all financial commitments towards other municipalities or national and provincial organs of state.

(2) In order to enable municipalities to include grants from other municipalities in their budgets and to plan effectively for the spending of such grants, the accounting officer of a municipality responsible for the transfer of any such grant to another municipality must by no later than 1 March of a year, or such other date as may be prescribed, notify the receiving municipality of the projected amount of any grant proposed to be transferred to that municipality during each of the next three financial years.

Stopping of funds to municipalities

23L. (1) The National Treasury may stop –

- (a) the transfer of funds due to a municipality as its share of the local government's equitable share referred to in section 214 (1) (a) of the Constitution, but only if the municipality commits a serious or persistent breach of the measures established in terms of section 216 (1) of the Constitution; or
- (b) the transfer of funds due to a municipality as an allocation referred to in section 214 (1) (c) of the Constitution or as an agency payment, but only if the municipality or the municipal entity for which the funds are destined –
 - (i) commits a serious or persistent breach of the measures established in terms of section 216 (1) of the Constitution; or
 - (ii) breaches or fails to comply with any conditions subject to which the allocation or agency payment is made.

DRAFT OF 13 SEPTEMBER 2002

(2) Before the National Treasury stops the transfer of funds to a municipality in terms of subsection (1) (a) or (b), it must –

(a) consult the Cabinet member responsible for the national department making the transfer; and

(b) inform the MEC for local government in the province; and

(c) give the municipality, or the municipal entity for which the funds are destined, an opportunity to submit written representations with regard to the proposed stopping of the funds.

(3) If the stopping of funds in terms of subsection (1) (a) or (b) may affect the provision of basic municipal services in the municipality, the provincial executive –

(a) must monitor the continuation of those services; and

(b) may intervene in terms of section 139 of the Constitution if the municipality cannot or does not fulfill its obligations with regard to the provision of those services.

Stopping of equitable share allocations to municipalities

23M. (1) A decision by the National Treasury to stop the transfer to a municipality of funds referred to in section 23L (1) (a) –

(a) lapses after the expiry of 120 days, subject to approval of the decision in terms of paragraph (b) of this subsection and renewal of the decision in terms of subsection (2); and

(b) may be enforced immediately, but will lapse retrospectively unless Parliament approves it following a process substantially the same as that established in terms of section 75 of the Constitution, and prescribed by the joint rules and orders of Parliament. This process must be completed within 30 days of the decision by the National Treasury to stop the transfer of the funds.

DRAFT OF 13 SEPTEMBER 2002

(2) Parliament may renew a decision to stop the transfer of funds for no more than 120 days at a time, following the process established in terms of subsection (2).

(3) Before Parliament approves or renews a decision to stop the transfer of funds to a municipality –

(a) the Auditor-General must report to Parliament; and

(b) the municipality must be given an opportunity to answer the allegations against it, and to state its case, before a committee.

Stopping of other allocations and agency payments to municipalities

23N. If the transfer of funds to a municipality has been stopped in terms of section 23L (1) (b) for the rest of the relevant financial year, the Cabinet member responsible for the transfer must promptly submit a notice of such stopping of funds together with reasons to both the National Assembly and the National Council of Provinces.

Decisions to increase cost of bulk services or to cap increases in municipal revenue

23O. (1) A national or provincial organ of state may increase the cost of water, electricity or other prescribed bulk service for municipalities only after the Minister and each municipality affected by the increase have been consulted.

(2) A power conferred by national or provincial legislation on a national or provincial organ of state to determine the upper limit of a municipal tariff, rate or tax or of revenue from any other source, may despite such legislation be exercised by such national or provincial organ of state –

(a) only with the approval of the Minister; and

(b) only after the Financial and Fiscal Commission and organised local government have been consulted.

(3) A decision referred to in subsection (1) or (2) which is made known –

DRAFT OF 13 SEPTEMBER 2002

- (a) on or before 28 February in any year, does not take effect for municipalities before 1 July in that year; or
- (b) after 28 February in any year, does not take effect for municipalities before 1 July the next year.

Disputes between organs of state

23P. (1) Whenever a dispute of a financial nature arises between organs of state, the parties concerned must as promptly as possible take all reasonable steps that may be necessary to resolve the matter out of court.

(2) If the Minister is not a party to the dispute, the parties –

- (a) must report the matter to the Minister; and
- (b) may request the Minister to mediate between the parties or to designate a person to mediate between them.

(3) If the Minister accedes to a request in terms of subsection (2), the Minister may determine the mediation process.

(4) This section only applies if at least one of the organs of state referred to in subsection (1) is a municipality or municipal entity.

CHAPTER 5

DEBT

Short-term debt

24. (1) A municipality may incur short-term debt only in accordance with and subject to the provisions of this [Chapter] Act.

(2) A municipality may incur short-term debt only when necessary to bridge—

DRAFT OF 13 SEPTEMBER 2002

- (a) shortfalls within a financial year during which the debt is incurred, in **[anticipation]** expectation of specific and realistic anticipated income to be received within that financial year; or
- (b) capital needs within a financial year, to be repaid from specific funds to be received from enforceable grants or long-term debt commitments.

(3) A municipality—

- (a) must pay off short-term debt within the financial year; and
- (b) may not renew or refinance its short-term debt, nor that of a municipal entity under its sole or joint ownership control.

(4) (a) No lender may wilfully extend credit to a municipality for the purpose of renewing or refinancing short-term debt that must be paid off in terms of subsection (3)(a).

(b) If a lender wilfully extends credit to a municipality in contravention of paragraph (a), the municipality is not bound to repay the loan or interest on the loan.

(5) Subsection (4)(b) does not apply if the lender—

- (a) relied in good faith on written representations of the municipality as to the purpose of the borrowing; and
- (b) did not know and had no reason to believe that the borrowing was for the purpose of renewing or refinancing **[its]** short-term debt.

Long-term debt

25. (1) A municipality may incur long-term debt only in accordance with and subject to the provisions of this **[Chapter]** Act.

(2) A municipality may incur long-term debt only for the purpose of—

DRAFT OF 13 SEPTEMBER 2002

- (a) capital expenditure on property, plant or equipment to be used for the purpose of achieving the objects of local government as set out in section 152 of the Constitution; or
- (b) re-financing existing long-term debt, if such re-financing is in accordance with a prescribed framework.

(3) Capital expenditure contemplated in subsection (2)(a) may include—

- (a) financing costs, including—
 - (i) capitalised interest for a reasonable initial period;
 - (ii) security arrangements [**such as a reserve fund**] in accordance with section 27;
 - (iii) discounts and fees in connection with the financing;
 - (iv) fees for legal, financial advisory, trustee and other services directly connected to the financing; and
 - (v) costs for printing, publication and competition directly connected to the financing;
- (b) costs of professional services directly related to the capital expenditure; and
- (c) such other costs as may be prescribed.

(4) **[A municipality in respect of which a financial emergency has been declared may incur long-term debt to support financial restructuring in accordance with the approved]** A municipality may borrow money for the purpose of re-financing existing long-term debt, provided –

- (a) the existing long-term debt was lawfully incurred;
- (b) the re-financing will not extend the term of the debt beyond the useful life of the property, plant or equipment (if any) for which the money was originally borrowed;
- (c) the net present value of projected future payments (including principal and interest payments) after re-financing is less than the net present value of projected future payments before re-financing. The projected future payments, the discount rate used in projecting net present value, and any assumptions in connection with the calculations must be reasonable, and in accordance with any prescribed criteria.

DRAFT OF 13 SEPTEMBER 2002

Conditions on which short and long-term debt may be incurred

26. (1) A municipality may incur debt only if –

(a) the debt is denominated in Rand and is not indexed to, or affected by, fluctuations in the value the Rand against any foreign currency;

(b) section 27(4) has been complied with, where security is to be provided in terms of section 27; and

(c) subsection (2) or (3) of this section has been complied with and, in the case of short-term debt referred to in subsection (2) (a) (ii), the debt is incurred with the approval of the mayor.

(2) (a) A municipality may incur short-term debt only if the accounting officer of the municipality has made a prior written finding that the debt either –

(i) is within prudential limits on short-term debt as previously approved by the municipal council; or

(ii) is necessary due to an emergency that could not reasonably have been foreseen and cannot await council approval.

(b) The accounting officer must in the case of short-term debt pursuant to a finding contemplated in paragraph (a) (ii), notify the council in writing as soon as practical of the amount, duration, and the cost of such debt, as well as options for repaying such debt.

(3) A municipality may incur long-term debt only if the accounting officer of the municipality –

(a) at least 21 days prior to the meeting of the council at which approval for the debt is to be considered, has published a notice in a newspaper of general circulation in the municipality –

DRAFT OF 13 SEPTEMBER 2002

- (i) stating particulars of the proposed debt, including the amount of the proposed debt, the purposes for which the debt is to be incurred and particulars of any security to be provided;
- (ii) stating the place, including the website address, where detailed particulars concerning the proposed debt can be obtained; and
- (iii) inviting the public to submit written comments or representations to the council in respect of the proposed debt;
- (b) has disseminated the substance of the notice to the local community in terms of section 21 of the Municipal Systems Act; and
- (c) has submitted an information statement to the council at least 14 days prior to the meeting of the council setting out –
 - (i) the purpose for which the debt is to be incurred;
 - (ii) the anticipated total cost in connection with such debt over the repayment period;
 - (iii) the essential repayment terms, including the anticipated debt repayment schedule;
and
 - (iv) particulars of any security to be provided.

Security

27. (1) A municipality may, by resolution of its council, authorise security to be provided for –
- (a) any of its debt obligations;
 - (b) any debt obligations of a municipal entity under its sole or joint ownership control; or
 - (c) contractual obligations of the municipality undertaken in connection with capital expenditure by other persons on property, plant or equipment to be used by the municipality or such other person for the purpose of achieving the objects of local government in terms of section 152 of the Constitution.

DRAFT OF 13 SEPTEMBER 2002

- (2) Without detracting from the generality of subsection (1), a municipality [**when incurring debt,**] may provide security to investors by—
- (a) [**undertake**] undertaking to effect payment directly from money or sources that may become available and authorise direct access to such sources to ensure payment of the debt or performance of those obligations;
 - (b) [**undertake**] undertaking to deposit funds with the lender or a third party as security [**for the debt**];
 - (c) [**agree**] agreeing to specific payment mechanisms or procedures to ensure exclusive or dedicated payment to lenders, including revenue intercepts, payments into dedicated accounts or other payment mechanisms or procedures;
 - (d) [**cede**] ceding as security any category of revenue or rights to future revenue; [**specified in the financing agreement or information statement contemplated in section 26(d)**]
 - (e) [**undertake**] undertaking to have disputes resolved through mediation, arbitration or other dispute-resolution mechanisms;
 - (f) [**undertake**] undertaking to retain revenues or specific charges, fees, tariffs or funds at a particular level or at a level sufficient to meet its obligations [**arising from that debt**];
 - (g) [**undertake**] undertaking to make provision in its budgets for the payment of those obligations, including capital and interest;
 - (h) [**agree**] agreeing to restrictions on [**other**] debt that the municipality may incur in future until the secured debt is settled or the contractual obligations are met; and
 - (i) [**agree**] agreeing to such other arrangements as the municipality may consider necessary and prudent.
- (3) A council resolution authorising the provision of security in terms of subsection (1)—
- (a) must determine whether the asset or right with respect to which the security is provided, is necessary for providing [**a minimum essential municipal service**] the minimum level of basic municipal services; and

DRAFT OF 13 SEPTEMBER 2002

(b) if so, must indicate the manner in which the availability of the asset or right for the provision of that **[service]** minimum level of basic municipal services will be protected.

(4) If the resolution has determined that the asset or right is necessary for providing **[a minimum essential municipal service, the lender]** the minimum level of basic municipal services, neither the party to whom the municipal security is provided, nor any successor or assignee of such party, may **[not]**, in the event of a default by the municipality, deal with the asset or right in a manner that would preclude or impede the continuation of that minimum **[essential]** level of basic municipal services.

(5) A determination in terms of subsection (3) that an asset or right is not necessary for providing **[a minimum essential municipal service]** the minimum level of basic municipal services is binding on the municipality until the secured debt has been paid in full or the secured obligations have been performed in full, as the case may be.

Disclosure

28. Any person involved in the borrowing of money by a municipality must, when interacting with a prospective lender or when preparing documentation for consideration by a prospective investor—

(a) disclose all information in that person's possession or within that person's knowledge that may be material to the decision of that prospective lender or investor; and

(b) take reasonable care to ensure the accuracy of any information disclosed.

Municipal guarantees

29. (1) A municipality may guarantee any debt of a municipal entity under its sole or joint ownership control only if—

(a) the debt is reflected in the business plan of the entity approved **[by the relevant municipal council or councils]** in accordance with section; and

DRAFT OF 13 SEPTEMBER 2002

- (b)* the debt is disclosed in the municipality's consolidated financial statements in the case of a municipality exercising sole ownership control over the entity and]
- (c)* the guarantee is authorised by the relevant municipal council [or councils] in the same manner and subject to the same conditions [provided for in] applicable in terms of this Chapter to borrowing.

(2) A municipality must disclose in its annual report particulars of all guarantees given by it during or still in force at the end of the financial year to which the report relates.

National and provincial guarantees

30. Neither the national nor a provincial government may guarantee debt of a municipality or of a municipal entity.

CHAPTER 6

[COUNCILLORS FOR FINANCIAL MATTERS] RESPONSIBILITIES OF MAYORS

[Councillors responsible for financial matters

- 31. (1) One of the members of a municipal council must be responsible for financial matters in the municipality.**
- (2) The councillor responsible for financial matters—**
- (a)* in the case of a municipality with an executive committee referred to in section 42 of the Municipal Structures Act, must be the mayor or, if the council has designated another councillor, that other councillor;
- (b)* in the case of a municipality with an executive mayor referred to in section 54 of the Municipal Structures Act, must be the executive mayor or, if the executive mayor has designated another councillor, that other councillor; and
- (c)* in the case of a municipality that does not have either an executive committee or an executive mayor, must be a councillor designated by the council.]

DRAFT OF 13 SEPTEMBER 2002

[Duties of councillors for financial matters] General responsibilities of mayors

- 32.** (1) The **[councillor for financial matters must]** mayor of a municipality—
- (a) must exercise general political [control] guidance over the financial affairs of the municipality; [but may not interfere in the financial management responsibilities assigned in terms of this Act to the municipal manager or the chief financial officer]
 - (b) [oversee expenditure and revenue collection with a view to preventing overspending of the municipality's budget or a vote;] must take all reasonable steps to ensure that the municipality perform its statutory functions within the limits of the approved budget;
 - (c) must within 30 days of the end of each quarter report to the council on the implementation of the budget and the financial state of affairs of the municipality;
 - (d) may not interfere in the responsibilities assigned in terms of this Act to the accounting officer or the chief financial officer; and
 - (e) must exercise the other powers and perform the other duties assigned by the council or [in terms of] this Act to the [councillor for financial matters] mayor.

Budget processes

- 32A.** (1) The mayor of a municipality must –
- (a) provide political guidance over the budget process and the priorities that must guide the preparation of a budget;
 - (b) co-ordinate the annual revision of the integrated development plan and the preparation of the annual budget, and determine how the integrated development plan is to be taken into account or revised for the purposes of the budget;
 - (c) take all reasonable steps to ensure –
 - (i) that the municipality approves its annual budget before the start of the financial year to which the budget relates;
 - (ii) that the municipality's budget implementation plan is finalised within 14 days after the approval of the budget; and

DRAFT OF 13 SEPTEMBER 2002

- (iii) that the annual performance agreements as required in terms of section 57 (1) (b) of the Municipal Systems Act for the municipal manager and all managers directly responsible to the municipal manager are –
- (i) linked to the measurable performance objectives approved with the budget in terms of section 23A (2) (c) (iv) of this Act;
 - (ii) to the extent that it measures performance on financial management, the performance contract includes measures on the responsibilities of the accounting officer in chapter 7 of this Act, and the audit opinion of the Auditor-General; and
 - (iii) concluded in accordance with section 57 (2) of the Municipal Systems Act.

(2) The mayor must report any delay in the signing of the annual performance agreements to the municipal council and the MEC for local government in the province.

Budgetary control and early identification of financial problems

32B. On receipt of a monthly budget report submitted by the accounting officer of the municipality in terms of section 42C, the mayor must –

- (a) consider the report;
- (b) check whether the budget is implemented in accordance with the budget implementation plan;
- (c) issue any appropriate instructions to the accounting officer to ensure –
 - (i) that the budget is implemented in accordance with the budget implementation plan; and
 - (ii) that spending of funds and revenue collection proceed in accordance with the budget;
- (d) identify any emerging or impending financial problems facing the municipality and, if serious, alert the council of such problems;

DRAFT OF 13 SEPTEMBER 2002

- (e) promptly respond to and initiate any remedial or corrective steps proposed by the accounting officer, which may include –
 - (i) the reduction of spending plans when revenue is anticipated to be less than projected in the budget;
 - (ii) the tabling of an adjustments budget; or
 - (iii) steps in terms of Chapter 11; and
- (f) if serious, report any such financial problems to the MEC for local government in the province.

Provincial intervention

32C. If a municipality has not approved an annual budget by the first day of the financial year to which that budget relates or if the municipality faces a financial problem which the municipality cannot resolve on its own, the mayor of the municipality –

- (a) must report the matter immediately to the MEC for local government in the province; and
- (b) may recommend to the MEC a provincial intervention in terms of section 139 of the Constitution.

Exercise of ownership control powers over municipal entities

32D. The mayor of a municipality which exercises sole or joint ownership control over a municipal entity must guide the municipality in exercising its ownership control powers over the municipal entity in a way –

- (a) that would ensure that the municipal entity complies with this Act; and
- (b) that would not impede the entity from performing its operational responsibilities.

Municipalities which do not have mayors

32E. (1) The council of a municipality which does not have a mayor, must designate a councillor to exercise the powers and duties assigned by this Act to a mayor.

- (2) A reference in this Act to the mayor of a municipality must, in the case of

DRAFT OF 13 SEPTEMBER 2002

a municipality which does not have a mayor, be construed as a reference to a councillor designated by the council of the municipality in terms of subsection (1).

Municipalities with executive committees

32F. The powers and functions assigned by this Act to a mayor must, in the case of a municipality which has an executive committee referred to in section 43 of the Municipal Structures Act, be exercised by the mayor in consultation with the executive committee.

Delegations by [councillors for financial matters] mayors

33. (1) **[The councillor for financial matters may delegate any of the powers or duties assigned to that councillor in terms of this Act to any other councillor of the municipality.]** The powers and duties assigned in terms of this Act to the mayor of a municipality, may –

- (a) in the case of a municipality which has an executive mayor referred to in section 55 of the Municipal Structures Act, be delegated in terms of section 60 (1) of that Act to another member of the municipality's mayoral committee;
- (b) in the case of a municipality which has an executive committee referred to in section 43 of that Act, be delegated by the council of the municipality to another member of the executive committee; or
- (c) in the case of a municipality which has designated a councillor in terms of section 32A (1), be delegated by the council to any other councillor.

(2) A delegation in terms of subsection (1)—

- (a)* must be in writing;
- (b)* is subject to any limitations or conditions that the **[councillor for financial matters] mayor** may impose; and
- (c)* does not divest the **[councillor for financial matters] mayor** of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

DRAFT OF 13 SEPTEMBER 2002

(3) The mayor may confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

CHAPTER 7

[DUTIES] RESPONSIBILITIES OF MUNICIPAL OFFICIALS

Part 1: [Municipal managers] Accounting officers

Municipal managers to be accounting officers

34. [(1)] The municipal manager of a municipality is the accounting officer of the municipality for the purposes of this Act, and, **[is responsible for assuring compliance]** as accounting officer, must take all reasonable steps to ensure that the municipality, including the political structures and office-bearers, and officials in the service, of the municipality, and any municipal entity under the sole or joint ownership control of the municipality, comply with this Act.

[(2) If the municipal manager is absent or otherwise unable to perform the functions of office, or during a vacancy, the acting municipal manager is the accounting officer for the purposes of this Act and, while acting as such, is responsible for assuring compliance with this Act].

Fiduciary responsibilities of accounting officers

35. (1) [As] The accounting officer of a municipality **[the municipal manager]** must—

- (a) act with fidelity, honesty, integrity and in the best interests of the municipality in managing its financial affairs;
- (b) disclose to the municipal council and the mayor all material facts which are available to the **[municipal manager]** accounting officer or reasonably discoverable, and which in any way might influence the decisions or actions of the council or the mayor; and

DRAFT OF 13 SEPTEMBER 2002

(c) seek, within the sphere of influence of that **[municipal manager]** accounting officer, to prevent any prejudice to the financial interests of the municipality.

(2) **[A municipal manager]** An accounting officer may not—

- (a) act in a way that is inconsistent with the duties assigned to **[a municipal manager]** an accounting officer in terms of this Act; or
- (b) use the position and privileges of, or confidential information obtained as, **[municipal manager]** accounting officer for personal gain or to improperly benefit another person.

Financial management

General financial management functions

36. (1) The accounting officer of a municipality—

- (a) is responsible for the effective, efficient, economical and transparent use of the resources of the municipality;
- (b) must keep full and proper records of the financial affairs of the municipality in accordance with any prescribed norms and standards;
- (c) must ensure that the municipality has and maintains—
 - (i) effective, efficient and transparent systems of financial and risk management and internal control;
 - (ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with section 107 and any prescribed norms and standards;
- (d) must take all reasonable steps to prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and
- (e) must take effective and appropriate disciplinary steps against any official in the service of the municipality who—
 - (i) contravenes or fails to comply with a provision of this Act;
 - (ii) commits an act which undermines the financial management and internal control system of the municipality; or

DRAFT OF 13 SEPTEMBER 2002

(iii) makes or permits an unauthorised, irregular or fruitless and wasteful expenditure.

(2) The accounting officer of a municipality must take all reasonable steps to ensure that the municipality has and implements –

(a) a procurement and asset disposal policy which the municipality must adopt in terms of section 105A;

(b) a tariff policy referred to in section 74 of the Municipal Systems Act, read with section 105B of this Act;

(c) a rates policy as may required in terms of any applicable national legislation, read with section 105B of this Act; and

(d) a credit control and debt collection policy referred to in section 96 (b) of the Municipal Systems Act, read with section 105C of this Act.

(3) The accounting officer must maintain and regularly update the municipality's official website and promptly place on the website –

(a) the latest annual and adjustments budgets and all budget-related documents;

(b) all policies of the municipality referred to in subsection (2);

(c) the latest annual report; and

(d) any other documents that may be prescribed.

(4) The accounting officer is responsible for all funds set up by the municipality, including any relief, charitable or trust fund set up by the municipality in terms of section 11A, and must account for the money in such funds.

Asset and liability management

37. (1) The accounting officer of a municipality is responsible for the management of—

(a) the assets of the municipality, including the safeguarding and the maintenance of those assets; and

(b) the liabilities of the municipality.

DRAFT OF 13 SEPTEMBER 2002

- (2) The accounting officer must for the purposes of subsection (1) –
- (a) ensure that the municipality maintains a management, accounting and information system that accounts for the assets and liabilities of the municipality;
 - (b) cause the municipality's assets and liabilities to be valued in accordance with standards of generally recognised accounting practice; and
 - (c) establish and maintain a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed.

Revenue management

38. (1) The accounting officer of a municipality is responsible for the management of the revenue of the municipality.

- (2) The accounting officer must for the purposes of subsection (1) –
- (a) ensure that the municipality has proper revenue collection systems consistent with section 95 of the Systems Act and the municipality's credit control and debt collection policy;
 - (b) on a monthly basis calculate revenue due to the municipality;
 - (c) ensure that accounts for property rates and for municipal services provided on credit are prepared on a monthly basis, or less often as may be prescribed where monthly accounts are uneconomical;
 - (d) collect revenue in accordance with the municipality's credit control and debt collection policy;
 - (e) ensure that all money received is promptly deposited in accordance with this Act into the municipality's primary and other bank accounts;
 - (f) establish and maintain a management, accounting and information system which –
 - (i) recognises revenue when it is earned;
 - (ii) accounts for debtors; and
 - (iii) accounts for receipts of revenue;

DRAFT OF 13 SEPTEMBER 2002

- (g) establish and maintain a system of internal control in respect of debtors and revenue as may be prescribed;
- (h) charge interest on arrears, except where the council has granted exemptions in accordance with its budget-related policies or within a prescribed framework; and
- (i) ensure that all revenue received by the municipality, including revenue received by any collecting agent on its behalf, is reconciled at least on a weekly basis.

(3) The accounting officer must immediately inform the National Treasury of any payments for municipal services or rates and taxes due to the municipality by a national or provincial organ of state which are regularly and consistently in arrears for periods of more than 30 days.

- (4) The accounting officer must ensure –
 - (a) that any funds collected by the municipality on behalf of another organ of state is transferred to that organ of state at least on a weekly basis; and
 - (b) that such funds are not used for the purposes of the municipality or otherwise than as agreed with the organ of state.

Expenditure management

39. (1) The accounting officer of a municipality is responsible for the management of the expenditure of the municipality.

- (2) The accounting officer must for the purpose of subsection (1) –
 - (a) ensure that the municipality has and maintains a proper system of expenditure control, including for the approval, authorisation, withdrawal and payment of funds.
 - (b) ensure that the municipality has and maintains a management, accounting and information system which –
 - (i) recognises expenditure when it is incurred;
 - (ii) accounts for creditors of the municipality; and
 - (iii) accounts for payments made by the municipality;

DRAFT OF 13 SEPTEMBER 2002

- (c) ensure that the municipality has and maintains a system of internal control in respect of creditors and payments;
- (d) when making payments ensure that payments are made –
 - (i) directly to the person to whom it is due unless agreed otherwise; and
 - (ii) electronically or by way of non-transferable cheques, provided that cash payments and payments by way of cash cheques may be made but only up to a prescribed limit or on conditions and for purposes as may be prescribed;
- (e) pay all money owing within 30 days of it becoming due, or as may be agreed otherwise;
- (f) comply with tax, levy, duty, pension, and other commitments of the municipality as required by legislation;
- (g) manage available working capital effectively and economically in terms of the prescribed cash management and investment framework;
- (h) implement the municipality's procurement and asset disposal policy referred to in section 105A in a way that is fair, equitable, transparent, competitive, cost-effective; and
- (i) ensure that all accounts of the municipality are closed at the end of each month and reconciled with its records.

Expenditure on staff benefits

- 40.** The accounting officer of a municipality must –
- (a) in a format and at intervals as may be prescribed, report to the council on all expenditure incurred by the municipality on staff benefits, and in a manner that discloses such expenditure per type of expenditure, namely –
 - (i) contributions for pensions and medical aid;
 - (ii) travel, motor car, accommodation, subsistence and other allowances;
 - (iii) housing and any loans;
 - (iv) overtime; and
 - (v) any other type of expenditure related to staff benefits; and
 - (b) disclose such expenditure in the municipality's annual report in a prescribed format.

DRAFT OF 13 SEPTEMBER 2002

Funds transferred to organisations and bodies outside government

41. (1) Before transferring to an organisation or body outside any sphere of government funds of the municipality otherwise than in compliance with a commercial or other business transaction, the accounting officer must be satisfied that the organisation or body –

(a) has the capacity and has agreed –

(i) to comply with all reporting, financial management and auditing requirements as may be prescribed;

(ii) to report regularly to the accounting officer on actual expenditure against such transfer; and

(iii) to submit its audited financial statements at the end of its financial year to the accounting officer;

(b) implements effective, efficient and transparent financial management and internal control systems to guard against fraud, theft and financial mismanagement; and

(c) has in respect of previous similar transfers complied with all requirements of this section.

(2) The accounting officer must through contractual and other appropriate mechanisms enforce compliance with subsection (1).

(3) Subsection (1) (a) does not apply to an organisation or body serving the poor or used by government as an agency to serve the poor, provided that –

(a) the transfer does not exceed a prescribed limit; and

(b) the accounting officer –

(i) takes reasonable precautions to ensure that the poor receive the benefit of those funds; and

(ii) certifies that compliance by that organisation or body with subsection (1) (a) is uneconomical.

Budget preparation

42. The accounting officer of a municipality must –

DRAFT OF 13 SEPTEMBER 2002

- (a) assist the mayor in performing the budgetary functions assigned to the mayor in terms of Chapter 4; and
- (b) provide the mayor with the administrative support, resources and information necessary for the performance of those functions.

Budget implementation

42A. (1) The accounting officer of a municipality is responsible for implementing the municipality's budget, including taking effective and appropriate steps to ensure that –

- (a) the spending of funds is in accordance with the budget and is reduced as necessary when revenue is anticipated to be less than projected in the budget or the budget implementation plan; and
- (b) revenue and expenditure are properly monitored.

(2) When necessary the accounting officer must prepare an adjustments budget and submit it to the mayor for consideration and tabling in the municipal council.

(3) The accounting officer must no later than 14 days after the tabling of a budget in the municipal council submit to the mayor –

- (a) the draft budget implementation plan; and
- (b) drafts of the annual performance agreements as are required in terms of section 57 (1) (b) of the Municipal Systems Act for the municipal manager and all managers directly responsible to the municipal manager.

Impending shortfalls, overspending and overdrafts

42B. (1) The accounting officer of a municipality must report in writing to the municipal council –

- (a) any impending—
 - (i) shortfalls in budgeted revenue; and
 - (ii) overspending of the municipality's budget; and

DRAFT OF 13 SEPTEMBER 2002

(b) any steps taken to rectify such shortfalls or overspending.

(2) If the consolidated balance in a municipality's bank accounts shows a net overdrawn position for a period exceeding a prescribed period or if, in the case of a municipality having only one bank account, the municipality's bank account is overdrawn for a period exceeding such prescribed period, the accounting officer of the municipality must notify the National Treasury, in writing, of –

(a) the amount by which the account or accounts are overdrawn;

(b) the reasons for the overdrawn account or accounts; and

(c) the steps taken or to be taken to correct the matter.

Reports and reportable matters

Monthly budget reports

42C. (1) The accounting officer of a municipality must by no later than seven working days

after the end of each month submit to the mayor of the municipality and the National Treasury a report in the prescribed format on the state of the municipality's budget reflecting –

(a) the actual revenue, per revenue source, received during that month, and during the financial year up to the end of that month;

(b) actual borrowings during that month, and during the financial year up to the end of that month;

(c) the actual expenditure, per vote, incurred during that month, and during the financial year up to the end of that month;

(d) the actual capital expenditure, per vote, incurred during that month, and during the financial year up to the end of that month;

(e) the amount of any transfers received during that month, and during the financial year up to the end of that month, from national organs of state in terms of the annual Division of Revenue Act, and from provincial organs of state and other municipalities;

DRAFT OF 13 SEPTEMBER 2002

- (f) the actual expenditure incurred during that month on those transfers, excluding expenditure on its share of the local government equitable share and on transfers which the annual Division of Revenue Act exempts from this section;
- (g) when necessary, an explanation of –
 - (i) any material variances from the municipality's revenue by source, and from the municipality's expenditure projections per vote; and
 - (ii) any remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within the approved budget or as last revised; and
- (h) a projection of revenue and expenditure for the rest of the financial year, and any revisions from initial projections.

(2) The amounts reflected in the report must in each case be compared with the corresponding amounts budgeted for in the annual budget as revised by any adjustments budget.

(3) The report to the National Treasury referred to in subsection (1) may be in electronic format. If the report was submitted in electronic format, a written version of the report, certified by the accounting officer, must be submitted to the National Treasury no later than 25 days after the end of the relevant month.

(4) The accounting officer of a municipality which has received a transfer referred to in subsection (1) (e) during a relevant month must, by no later than seven working days after the end of that month, submit that part of the report reflecting the particulars referred to in subsection (1) (e) and (f) to the national or provincial organ of state or municipality which made the transfer.

Reports on municipal entities and other undertakings

42D. The accounting officer of a municipality must notify the National Treasury, in writing, of any new entity which the municipality intends to establish, or in the establishment of which it

DRAFT OF 13 SEPTEMBER 2002

intends to take the initiative or to participate, at least 60 days before the municipality takes any step towards establishing, or initiating or participating in the establishment of, the entity.

Reports on failure to adopt or implement budget-related and other policies

42E. The accounting officer must inform the MEC for local government in the province and the National Treasury, in writing, of –

- (a) any failure by the council of the municipality to adopt or implement a budget-related policy or a procurement and asset disposal policy referred to in section 105A; or
- (b) any non-compliance by a political structure or office-bearer of the municipality with any such policy.

General reporting obligation

42F. The accounting officer of a municipality must submit to the National Treasury, the the MEC for local government in the province or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the National Treasury, that MEC or the Auditor-General may require

Protection of accounting officer

42G. Any action taken by a political structure or office-bearer of a municipality against the accounting officer of the municipality solely because of that accounting officer's compliance with a provision of this Act, is an unfair labour practice for the purposes of the Labour Relations Act, 1995 (Act No. 66 of 1995).

Part 2: Financial administration

Top management

42H. (1) The top management of a municipality's administration consists of –

- (a) the accounting officer;
- (b) the chief financial officer;

DRAFT OF 13 SEPTEMBER 2002

- (c) all managers referred to in section 56 of the Municipal Systems Act who are responsible for managing the respective votes and to whom powers and duties for this purpose have been delegated in terms of section 42J of this Act; and
- (d) any other senior staff members designated by the accounting officer.

(2) The top management must assist the accounting officer in managing and co-ordinating the financial administration of the municipality.

Managers and other officials of municipalities

42I. A manager referred to in section 56 of the Municipal Systems Act or other official of a municipality—

- (a) must ensure that the system of financial management and internal control established for the municipality is carried out within the area of responsibility of that manager or official;
- (b) must ensure the effective, efficient, economical and transparent use of financial and other resources within the area of responsibility of that manager or official;
- (c) must take effective and appropriate steps to prevent, within the area of responsibility of that manager or official, any unauthorised, irregular or fruitless or wasteful expenditure and any under-collection of revenue due;
- (d) must comply with the provisions of this Act to the extent applicable to that manager or official, including any delegations in terms of section 42J;
- (e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within the area of responsibility of that manager or official; and
- (f) must perform these functions subject to the directions of the accounting officer of the municipality.

Delegations

42J. (1) The accounting officer of a municipality –

DRAFT OF 13 SEPTEMBER 2002

- (a) must for the proper application of this Act in the municipality's administration develop an appropriate system of delegation that will both maximise administrative and operational efficiency and provide adequate checks and balances in the municipality's financial administration;
- (b) may, in accordance with that system, delegate any of the powers or duties assigned to an accounting officer in terms of this Act –
 - (i) to a member of the municipality's top management referred to in section 42H;
 - and
 - (ii) to any other official of the municipality;
- (c) must regularly review delegations in terms of paragraph (b) and, if necessary, amend or withdraw any of those delegations.

(2) A delegation in terms of subsection (1)–

- (a) must be in writing;
- (b) is subject to such limitations and conditions as the accounting officer may impose in a specific case;
- (c) may either be to a specific individual or to the holder of a specific post in the municipality;
- (d) may, in the case of a delegation to a member of the municipality's top management in terms of subsection (1) (b) (i), authorise that member to sub-delegate the delegated power or duty to an official or the holder of a specific post in that member's area of responsibility; and
- (e) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(3) The accounting officer may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

CHAPTER 8
MUNICIPAL BUDGET AND TREASURY OFFICES

Establishment of office

- 43.** (1) Every municipality must have a budget and treasury office.
- (2) A budget and treasury office consists of—
- (a) a chief financial officer designated by the **[municipal manager] accounting officer of the municipality**;
 - (b) staff allocated by the **[municipal manager] accounting officer** to the chief financial officer; and
 - (c) any other persons contracted by the municipality for the work of the office.

Role of chief financial officer

- 44.** (1) The chief financial officer of a municipality—
- (a) is administratively in charge of the budget and treasury office;
 - (b) must advise the accounting officer on the performance of functions assigned to the accounting officer in terms of this Chapter;
 - (c) must advise other senior officials in the performance of functions delegated to them in terms of section 42J; and
 - (d) must perform such budgeting, accounting, analysis, financial reporting, cash management, debt management, financial management, review and other functions as may be delegated to the chief financial officer by the **[municipal manager] accounting officer**.
- (2) The chief financial officer of a municipality is accountable to the **[municipal manager] accounting officer** for the performance of the functions referred to in subsection (1).

DRAFT OF 13 SEPTEMBER 2002

Delegation of functions

45. (1) The chief financial officer of a municipality may sub-delegate any of the functions referred to in section **44(1)(b)**—

- (a) to an official in the budget and treasury office;
- (b) to the holder of a specific post in that office; or
- (c) with the concurrence of the [**municipal manager**] accounting officer, to—
 - (i) any other official of the municipality; or
 - (ii) any person contracted by the municipality for the work of the office.

(2) If the chief financial officer sub-delegates any functions in terms of subsection (1) to a person who is not an official of the municipality, the chief financial officer must be satisfied that effective systems and procedures are in place to ensure control and accountability.

- (3) A sub-delegation in terms of subsection (1)—
- (a) must be in writing;
 - (b) is subject to such limitations or conditions as the chief financial officer may impose; and
 - (c) does not divest that chief financial officer of the responsibility concerning the delegated function.

(4) The chief financial officer may confirm, vary or revoke any decision taken in consequence of a sub-delegation in terms of subsection (1), but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

Competency levels of budget and treasury office staff

45A. (1) The chief financial officer of a municipality and all other senior and professional staff of a budget and treasury office must meet the prescribed competency levels.

(2) A municipality must for the purposes of subsection (1) –

DRAFT OF 13 SEPTEMBER 2002

- (a) regularly test or provide for the regular testing of budget and treasury office staff referred to in subsection(1) in accordance with the prescribed minimum standards; and
 - (b) provide annual training courses for such budget and treasury office staff or allow such staff to attend such courses at the municipality's expense.
- (3) Consistent failure by a staff member to meet the prescribed competency levels is a ground for dismissal or transfer.
- (4) The National Treasury or a provincial treasury may assist municipalities in the training of budget and treasury office staff referred to in subsection(1).

CHAPTER 12

GENERAL TREASURY MATTERS

Procurement and asset disposal policy

- 105A.** (1) A municipality must adopt and implement a policy on the procurement of goods and services for the municipality and the disposal of assets no longer needed by the municipality.
- (2) The policy referred to in subsection (1) –
- (a) must be fair, equitable, transparent, competitive and cost- effective;
 - (b) must be consistent with –
 - (i) this Act; and
 - (ii) the Preferential Procurement Policy Act, 2001 (Act No. 5 of 2001; and
 - (c) may not unfairly discriminate against, or unfairly favour, specific contractors on any basis, including on the basis where they are located or are doing business;
 - (d) must determine criteria for –
 - (i) the establishment, composition and procedures of tender committees;
 - (ii) the selection of members of such committees;

DRAFT OF 13 SEPTEMBER 2002

- (iii) tender procedures; and
- (iv) the approval of tender committee recommendations;
- (e) must determine the conditions for the approval of tenders otherwise than through a tender committee system;
- (f) must –
 - (i) ensure that tender committee meetings are open to the public;
 - (ii) disallow the approval of tenders above a prescribed value by a municipal committee or official on behalf of the council; and
 - (iii) provide for a procedure to settle disputes arising during the tender processes; and
- (g) must provide for the invalidation of recommendations or decisions that were made, taken or in any way influenced by –
 - (i) a councillor in contravention of item 5 or 6 of the Code of Conduct for Councillors set out in Schedule 1 to the Municipal Systems Act; or
 - (ii) a municipal official in contravention of item 4 or 5 of the Code of Conduct for Municipal Staff Members set out in Schedule 2 to that Act.

Rates and tariff policies of municipalities

105B. A municipality's tariff policy referred to in section 74 of the Municipal Systems Act and a municipality's rates policy as may be required in terms of any applicable national legislation –

- (a) must provide for the fair and equitable exercise of the municipality's fiscal and tariff fixing powers, allowing for differentiation only when reasonable and justifiable; and
- (b) must be consistent with –
 - (i) this Act; and
 - (ii) any limits on the exercise those powers as may be determined in terms of any applicable national legislation.

Credit control and debt collection policies of municipalities

105C. A municipality's credit control and debt collection policy referred to in section 96 (b) of the Municipal Systems Act must –

- (a) be consistent with this Act; and

DRAFT OF 13 SEPTEMBER 2002

(b) ensure that all money that is due to the municipality is collected.

Audit committees

107. (1) A municipality and a municipal entity must have an audit committee which must be established and must function in accordance with regulations made in terms of section 106.

(2) An audit committee must—

(a) consist of at least three persons of whom the majority may not be in the employ of the municipality or municipal **[public]** entity, as the case may be; and

(b) meet as often as is required to perform its functions, but at least twice a year.

[(2)] (3) A single audit committee may be **[appointed]** established for—

(a) a district municipality and the local municipalities within that district municipality; and

(b) a municipality and municipal entities under its sole ownership control.

Councillors' remuneration

107A. (1) A municipality may remunerate its political office-bearers and members of its political structures, but only –

(a) within the framework of the Public Office-bearers Act,....., setting the upper limits of the salaries, allowances and benefits for those political office-bearers and members; and

(b) in accordance with section 219 (4) of the Constitution.

(2) Any remuneration paid or given in cash or in kind to a person as a political office-bearer or as a member of a political structure of a municipality otherwise than in accordance with subsection (1), including any bonus, loan, advance or other benefit, is an irregular expenditure, and the municipality must, and has the right to, recover that remuneration from the political office-bearer or member.

(3) The MEC for local government must report to the provincial legislature –

(a) any transgressions of subsection (1); and

DRAFT OF 13 SEPTEMBER 2002

(b) any non-compliance with sections 17 (3) (h) (i) and 66 (2) (e) (i)

Official website

107B. (1) Each municipality must –

(a) establish its own website; and

(b) place on that website information regarding the business and affairs of the municipality as may be required or prescribed in terms of this Act.

(2) If a municipality for good reason cannot comply with subsection (1) (a), it may display the information referred to in subsection (1) (b) on a website determined or sponsored by the National Treasury.

Treasury regulations [instructions] and guidelines

106. (1) The National Treasury may make regulations [**or issue instructions**] or guidelines applicable to municipalities and municipal entities, regarding—

(a) any matter that may be prescribed for municipalities or municipal entities in terms of this Act;

(b) financial management and internal control;

(c) a framework for regulating the exercise of municipal fiscal and tariff fixing powers;

(d) a framework for a municipal procurement [**and provisioning**] and asset disposal system which is fair, equitable, transparent, competitive and cost- effective;

(e) a framework for public private partnership agreements;

(f) the establishment by a municipality of, and control over –

(i) municipal entities; and

(ii) business units contemplated in section 76 (a) (ii) of the Municipal Systems Act;

(g) [**the transfer of assets from a municipality to a municipal entity under its sole or joint ownership control or from such entity to a municipality**] the safe-guarding of the financial affairs of municipalities or municipal entities when assets, liabilities or staff

DRAFT OF 13 SEPTEMBER 2002

are transferred from or to a municipality or a municipal entity for the purpose of providing municipal services;

- (h) the alienation, letting or disposal of assets by a municipality;
- [(i) audit committees, their appointment and their functioning;]**
- (j) internal audit components and their functioning;
- [(k) a costing framework for municipal activities;]**
- (l) the information to be disclosed when a municipality or municipal entity issues or incurs debt and the manner in which such information must be disclosed, including by way of a prospectus or other document;
- [(m) the compulsory disclosure of material facts and duty to make reasonable enquiry by councillors, officials of municipalities or municipal entities, lenders, brokers, underwriters and other persons when a municipality or municipal entity incurs debt;]**
- [(n) the prospectus or documents required for issuing or trading in municipal debt instruments;]**
- (o) the circumstances under which further or specific disclosures are required after money has been borrowed by a municipality or **[public] municipal** entity;
- [(p) specific facts to be disclosed upon the occurrence of events material to decisions of prospective lenders and investors;]**
- (q) the circumstances under which documentation or information pertaining to municipal debt must be lodged or registered;
- (r) the establishment of a registry for the registration of documentation and information pertaining to municipal borrowing;
- [(s) the administration of financial emergencies;]**
- [(t) the assignment of additional duties and powers to the Emergency Authority;]**
- [(u) the suspension, dismissal or discharge of financial recovery specialists;]**
- (v) the settlement of claims against a municipality following an order of court in terms of section **103**;
- (vA) the information that must be placed on a municipality's official website;

DRAFT OF 13 SEPTEMBER 2002

[(w) **the administration of this Act;**] and

(x) any other matter that may facilitate the [**application**] enforcement and administration of this Act.

[(2) The National Treasury may by regulation determine that a contravention of, or failure to comply with, a specific regulation in terms of subsection (1) is an offence and that a person convicted of such an offence is liable to a fine or to imprisonment for a period not exceeding one year.]

(3) A regulation [**instruction**] or guideline in terms of this section may—

(a) differentiate between different—

- (i) kinds of municipalities, which may, for the purposes of this section, be defined either in relation to categories, [**or**] types or budgetary size of municipalities or in any other manner;
- (ii) categories of municipal entities;
- (iii) categories of [**municipal managers**] accounting officers;
- (iv) categories of accounting authorities; or
- (v) categories of officials; or

(b) be limited in its application to a particular—

- (i) kind of municipality, which may, for the purposes of this section, be defined either in relation to a category, [**or**] type or budgetary size of municipality or in any other manner;
- (ii) category of municipal entities;
- (iii) category of [**municipal managers**] accounting officers;
- (iv) category of accounting authorities; or
- (v) category of officials.

[Publishing of draft treasury regulations for public comment] Consultative processes before promulgation of regulations

DRAFT OF 13 SEPTEMBER 2002

108. (1) **[Draft]** Before regulations in terms of section [104] 106 are promulgated, the National Treasury must –

- (a) consult organised local government on the substance of those regulations; and
- (b) **[be published for public comment]** publish the draft regulations in the *Government Gazette* [before their enactment] for public comment.

(2) Regulations made in terms of section 106 must be submitted to Parliament at least 30 days before their promulgation.

Departures from treasury regulations [instruction] or conditions

109. (1) The National Treasury may on good grounds approve a departure from a treasury regulation **[or instruction]** or from any condition imposed in terms of this Act.

(2) Non-compliance with a regulation made in terms of section 106, or with a condition imposed by the National Treasury in terms of this Act, may on good grounds shown be condoned by the Treasury.

CHAPTER 14

MISCELLANEOUS

Limitation of liability

116. No organ of state or person exercising a power or performing a function in terms of this Act, is liable in respect of anything done in good faith in terms of this Act.

Exemptions

117. (1) For a transitional period not to exceed five years, where practicalities prevent the strict application of this Act, the Minister, by notice in the *Gazette*, may exempt any municipality or municipal entity from any specific provision of this Act for a period and on conditions determined in the notice.

DRAFT OF 13 SEPTEMBER 2002

- (2) An exemption in terms of subsection (1) may—
- (a) apply to—
- (i) municipalities generally; or
 - (ii) municipal entities generally; or
- (b) be limited in its application to a particular—
- (i) municipality;
 - (ii) kind of municipality, which may, for the purposes of this section, be defined either in relation to a category, [**or**] type or budgetary size of municipality or in any other manner;
 - (iii) municipal entity; or
 - (iv) category of municipal entities.

Transitional provisions

118. (1) Anything done in terms of a provision repealed by section 119(1), which can be done in terms of a provision of this Act, must be regarded as having been done in terms of this Act.

(2) All municipalities must within three months of the date on which this section takes effect, submit to the National Treasury a list of all municipal entities and other corporate [**entities**] bodies in which the municipality has an interest, specifying—

- (a) the name and address of the municipal entity or other corporate body;
- (b) the purpose, extent and other particulars of the interest;
- (c) whether the municipal entity is under the sole or joint ownership control of the municipality; and
- (d) such other information as may be required by the National Treasury.

DRAFT OF 13 SEPTEMBER 2002

(3) If a municipality or a municipal entity [**or a subsidiary of a municipal entity**] holds an interest in any company or other [**entity**] corporate body in contravention of section 14, it must dispose of such interest within two years from the date on which that section took effect.

- (4) Section 24 (4) only applies—
- (a) from a date determined by the Minister by notice in the *Gazette*; and
 - (b) to the extent prescribed during the period of two years commencing from the date determined in terms of paragraph (a).

Repeal and amendment of legislation

119. (1) The legislation referred to in the second column of the Schedule is hereby amended or repealed to the extent indicated in the third column of the Schedule.

(2) Despite the repeal of section 10G of the Local Government Transition Act, 1993 (Act No. 209 of 1993), by subsection (1) of this section, the provisions contained in subsections (6), (6A) and (7) of section 10G remain in force until the legislation envisaged in section 229 (2) (b) of the Constitution is enacted.

[(1) The Municipal Accountants Act, 1988 (Act No. 21 of 1988), section 10G of the Local Government Transition Act, 1993 (Act No. 209 of 1993), and section 17(D) of the Promotion of Local Government Affairs Act, 1983 (Act No. 91 of 1983), are hereby repealed.

- (2) Schedule 1 to the Municipal Systems Act is hereby amended by—
- (a) the insertion in item 11 after paragraph (a) of the following paragraphs:
“(aA) interfere in the financial management responsibilities and functions assigned in terms of the Local Government: Municipal Finance Management Act, 2002, to the municipal manager or chief financial officer of the municipality;

DRAFT OF 13 SEPTEMBER 2002

- (aB) **interfere in the actions of the municipal manager relating to the appointment, promotion, discipline, transfer or dismissal of staff;”;**
- (b) **the insertion after item 6 of the following item:**
“Rates, tariffs and rent payable by councillors
- 6A. (1) A councillor must promptly and diligently pay all rates, tariffs, rent and other money due to the municipality.**
- (2) The municipal manager must notify the speaker of the council and the MEC for local government in writing if a councillor is in arrear with any of these payments for a period of longer than 30 days.”; and**
- (c) **the insertion after item 12 of the following item:**
“Duty of municipal manager to report alleged breaches of Code
- 12A. (1) If a municipal manager has a reasonable suspicion that a provision of this Code has been breached, the municipal manager must report the alleged breach to the speaker of the council and the MEC for local government.**
- (2) Any action taken against a municipal manager because of that municipal manager’s compliance with subitem (1), is an unfair labour practice for the purposes of the Labour Relations Act, 1995 (Act No. 66 of 1995).”.]**

Short title and commencement

120. (1) This Act is called the Local Government: Municipal Finance Management Act, 2002, and, subject to section 118(4), takes effect on 1 July [2002] 2003, except [the] those provisions determined by the Minister by notice in the *Gazette* which will take effect on a date determined in the notice.

(2) Different dates may in terms of subsection (1) be determined for different provisions of the Act.

DRAFT OF 13 SEPTEMBER 2002

(3) The Minister may, by notice in the *Gazette*, after consultation with organised local government, phase in the application of the provisions of this Act, and determine different dates on which different provisions of this Act will become applicable –

(a) to municipalities of different [**categories, types or kinds**] kinds, which may, for the purposes of this section, be defined either in relation to categories, types, budgetary sizes or in any other manner; and

(b) to municipal entities of different categories.

SCHEDULE
REPEAL AND AMENDMENT OF LEGISLATION
(Section 119)

No. and year of Act	Short title of Act	Extent of repeal or amendment
Act No. 91 of 1983	Promotion of Local Government Affairs Act, 1983	The repeal of section 17(D).
Act No. 21 of 1988	Municipal Accountants Act, 1988	The repeal of the whole
Act No. 209 of 1993	Local Government Transition Act, 1993	The repeal of section 10G

DRAFT OF 13 SEPTEMBER 2002

<p>Act No. 32 of 2000</p>	<p>Local Government: Municipal Systems Act, 2000</p>	<p>1. The amendment of section 1 by the insertion after the definition of “<i>municipal entity</i>” of the following definition:</p> <p>“ ‘<i>Municipal Finance Management Act</i>’ means the <u>Local Government: Municipal Finance Management Act, 2002;</u>”</p> <p>2. The substitution for section 9 of the following section:</p> <p>“[Assignments initiated by the executive to municipalities generally] <u>Assignment of additional functions and powers to municipalities by parliamentary or provincial Acts</u></p> <p>9. (1) A Cabinet member or Deputy Minister initiating the assignment of [a] <u>an additional</u> function or [a] power by way of [national legislation] <u>an Act of Parliament</u> to municipalities [generally] must, before the draft legislation providing for the assignment is introduced in Parliament –</p> <p>(a) consult the Minister, the [national] Minister of Finance and organised local government representing local government nationally;</p> <p>(b) consider any assessment by the Financial and Fiscal Commission in terms of subsection (4); and</p> <p>(c) publish the draft legislation in terms of section 154 (2) of the Constitution.</p> <p>(2) An MEC initiating the assignment of [a] <u>an additional</u> function or [a] power by way of [provincial legislation] <u>a provincial Act</u> to municipalities in the province [generally] must, before the draft legislation providing for the assignment is introduced in the provincial legislature –</p> <p>(a) consult the <u>National Treasury</u>, the MEC responsible for finance in the province, the MEC for local government in the province and organised local government representing local government in the province;</p> <p>(b) consider any assessment by the Financial and Fiscal Commission in terms of subsection (3); and</p>
-------------------------------	--	--

DRAFT OF 13 SEPTEMBER 2002

		<p>(c) publish the draft legislation in terms of section 154 (2) of the Constitution.</p> <p>(3) The Cabinet member, Deputy Minister or MEC initiating the national or provincial legislation referred to in subsections (1) and (2), must take appropriate steps to ensure sufficient funding, and capacity building initiatives as may be needed, for the performance of the assigned function or power by the municipalities concerned if –</p> <p>(a) the assignment of the function or power imposes a duty on the municipalities concerned;</p> <p>(b) that duty falls outside the functional areas listed in Part B of Schedule 4 or Part B of Schedule 5 to the Constitution or is not incidental to any of those functional areas; and</p> <p>(c) the performance of that duty has financial implications for the municipalities concerned.]</p> <p>(4) The Cabinet member, Deputy Minister or MEC initiating the legislation referred to in subsections (1) and (2), must request the Financial and Fiscal Commission to make an assessment of the financial implications of the legislation.</p> <p><u>(5) When draft legislation referred to in subsection (1) or (2) is introduced in Parliament or a provincial legislature, the legislation must be accompanied by—</u></p> <p><u>(a) a memorandum –</u></p> <p><u>(i) giving at least a three year projection of the financial implications of that function or power for those municipalities;</u></p> <p><u>(ii) disclosing any possible financial liabilities or risks after the three year period; and</u></p> <p><u>(iii) indicating how any additional expenditure by those municipalities will be funded; and</u></p> <p><u>(b) the assessment of the Financial and Fiscal Commission referred to in subsection (3).”</u></p>
--	--	--

		<p>3. The substitution for section 10 of the following sections:</p> <p><u>“Assignment of additional functions and powers to municipalities in terms of legislation or by agreement</u></p> <p><u>10.</u> If an additional function is assigned to a municipality in terms of a power contained in an Act of Parliament or a provincial Act, or by agreement in terms of section 99 or 126 of the Constitution, the organ of state assigning the function or power must, before assigning the function or power submit to the Minister and the National Treasury a memorandum –</p> <ul style="list-style-type: none">(a) <u>giving at least a three year projection of the financial implications of that function or power for the municipality; and</u>(b) <u>disclosing any possible financial liabilities or risks after the three year period; and</u>(c) <u>indicating how any additional expenditure by the municipality will be funded.</u> <p><u>Funding and capacity building</u></p> <p><u>10A.</u> The Cabinet member, MEC or other organ of state initiating an assignment of an additional function or power to a municipality or municipalities in terms of section 9 or 10 must take appropriate steps to ensure sufficient funding, and capacity building initiatives as may be needed, for the performance of the assigned function or power by the municipality or municipalities if –</p> <ul style="list-style-type: none">(a) <u>the assignment of the function or power imposes a duty on the municipality or municipalities;</u>(b) <u>that duty falls outside the functional areas listed in Part B of Schedule 4 or Part B of Schedule 5 to the Constitution or is not incidental to any of those functional areas; and</u>(c) <u>the performance of that duty has financial implications for the municipality.”</u> <p>4. The substitution for section 46 of the following section:</p>
--	--	---

DRAFT OF 13 SEPTEMBER 2002

		<p><u>“Annual performance reports</u></p> <p><u>46. (1) A municipality must prepare for each financial year a performance report reflecting –</u></p> <ul style="list-style-type: none"><u>(a) the performance of the municipality and of each service provider during that financial year;</u><u>(b) a comparison of those performances with targets of and performances in the previous financial year;</u><u>(c) the development and service delivery priorities and the performance targets set by the municipality for the next financial year; and</u><u>(d) measures that were taken to improve performance.</u> <p><u>(2) An annual performance report must be included in the municipality’s annual report referred to in section 66 of the Municipal Finance Management Act before the tabling of the annual report in the municipal council in terms of that Act.</u></p> <p><u>(3) If the inclusion of a performance report in an annual report would unduly delay the tabling of the annual report, the MEC for local government in the province may in writing allow the municipality to table the performance report separately from the annual report after the expiry of the period mentioned in section 68 (1) of the Municipal Finance Management Act.</u></p> <p><u>(4) If a municipality has in terms of subsection (3) been allowed to table its performance report separately from the annual report, section 68 (3) to (6) of the Municipal Finance Management Act, read with the necessary changes as the context may require, applies with respect to the performance report and the report on the audit performed in terms of section 45 (b) of this Act.”</u></p> <p>5. The amendment of section 55 by the substitution for paragraph (c) of subsection (1) of the following</p>
--	--	---

DRAFT OF 13 SEPTEMBER 2002

		<p>paragraph:</p> <p>“(c) proper and diligence compliance with [applicable municipal finance management legislation] <u>the Municipal Finance Management Act and any regulations made under that Act.</u>”</p> <p>6. The amendment of section 57 –</p> <p>(a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:</p> <p>“(a) be concluded within a reasonable time after a person has been appointed as the municipal manager or as a manager directly accountable to the municipal manager, and thereafter, within one month [after] <u>before</u> the beginning of the financial year of the municipality;”; and</p> <p>(b) by the insertion after subsection (4) of the following subsection:</p> <p>“(4A) <u>The provisions of the Municipal Finance Management Act conferring responsibilities on an accounting officer, must be regarded as forming part of the performance agreement of a municipal manager. Compliance with these provisions must be measured against the audit report on the financial statements of the municipality</u>”.</p> <p>7. The repeal of section 58.</p> <p>8. The amendment of section 74 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) A municipal council must adopt and implement a tariff policy on the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements, and which complies with the provisions of this Act, <u>the Municipal Finance Management Act, any regulations made under that Act and [with]</u> any other applicable legislation.”</p>
--	--	---

DRAFT OF 13 SEPTEMBER 2002

		<p>9. The amendment of section 81 by –</p> <p>(a) the substitution for subparagraph (v) of paragraph (a) of subsection (2) of the following subparagraph:</p> <p>“(v) managing its own accounting, financial management, budgeting, investment and borrowing activities within a framework of transparency, accountability, reporting and financial control determined by the municipality, subject to [applicable municipal finance management legislation] <u>the Municipal Finance Management Act and any regulations made under that Act;</u>”;</p> <p>(b) the insertion after paragraph (b) of the subsection (2) of section 81 of the following paragraph:</p> <p>“(c) <u>must ensure that the agreement provides for a dispute-resolution mechanism to settle disputes between the municipality and the service provider;</u>”.</p> <p>10. The amendment of section 83 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) If a municipality decides to provide a municipal service through a service delivery agreement with a person referred to in section 80 (1) (b), it must select the service provider through selection processes <u>complying with a regulatory framework prescribed in terms of the Municipal Finance Management Act and which –</u></p> <p>[(a) are competitive, fair, transparent and cost-effective;]</p> <p>(b) allow all prospective service providers to have equal and simultaneous access to information relevant to the bidding process;</p> <p>(c) minimise the possibility of fraud and corruption;</p> <p>(d) make the municipality accountable to the</p>
--	--	---

DRAFT OF 13 SEPTEMBER 2002

		<p>local community about progress with selecting a service provider, and the reasons for any decision in this regard; and</p> <p>(e) takes into account the need to promote the empowerment of small and emerging enterprises.”</p> <p>11. The amendment of section 92 by the substitution for paragraph (b) of subsection (1) of the following paragraph:</p> <p>“(b) must comply with [any legislation applicable to the financial management of municipalities and municipal entities] <u>the Municipal Finance Management Act and any regulations made under that Act.</u>”</p> <p>12. The amendment of Schedule 1 by –</p> <p>(a) the insertion in item 11 after paragraph (a) of the following paragraphs:</p> <p>“(aA) <u>interfere in the financial management responsibilities and functions assigned in terms of the Municipal Finance Management Act to the municipal manager as the accounting officer of the municipality or to the chief financial officer of the municipality;</u></p> <p>(aB) <u>interfere in the actions of the municipal manager relating to the appointment, promotion, discipline, transfer or dismissal of staff;</u>”;</p> <p>(b) the insertion after item 6 of the following item:</p> <p>“Rates, tariffs and rent payable by councillors 6A. (1) <u>A councillor must promptly and diligently pay all rates, tariffs,rent and other money due to the municipality.</u> (2) <u>The municipal manager must notify the speaker of the council and the MEC for local government in writing if a councillor is in arrear with any of these payments for a period of longer</u></p>
--	--	--

DRAFT OF 13 SEPTEMBER 2002

		<p>than 30 days.”; and</p> <p>(c) the insertion after item 12 of the following item:</p> <p><u>“Duty of municipal manager to report alleged breaches of Code</u></p> <p><u>12A.</u> (1) <u>If a municipal manager has a reasonable suspicion that a provision of this Code has been breached, the municipal manager must report the alleged breach to the speaker of the council and the MEC for local government.</u></p> <p>(2) <u>Any action taken against a municipal manager because of that municipal manager’s compliance with subitem (1), is an unfair labour practice for the purposes of the Labour Relations Act, 1995 (Act No. 66 of 1995).”</u></p>
--	--	---