

**THE PROVINCE OF THE NORTHERN CAPE
DIE PROVINSIE NOORD-KAAP**

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No. 141

GENERAL NOTICE • ALGEMENE KENNISGEWING

GENERAL NOTICE 15 OF 1996

**PUBLICATION OF THE NORTHERN CAPE
POWERS AND PRIVILEGES OF THE LEGISLA-
TURE AMENDMENT BILL, No. 3 OF 1996**

It is hereby notified for general information and comment that the above-mentioned Bill is hereby published in terms of Rule 127 (2) of the Rules of Procedure of the Northern Cape Legislature.

Any comments or remarks in this regard must be submitted to the Deputy Secretary, Northern Cape Provincial Legislature, Private Bag X5016, Kimberley, to reach him not later than **26 April 1996**.

P. HUMA

Deputy Secretary: Northern Cape Legislature

ALGEMENE KENNISGEWING 15 VAN 1996

**PUBLIKASIE VAN DIE WYSIGINGSWETSONT-
WERP OP DIE NOORD-KAAPSE WET OP DIE
BEVOEGDHEDE EN VOORREGTE VAN DIE WET-
GEWER, No. 3 VAN 1996**

Dit word vir algemene kennisname en kommentaar bekendgemaak dat bostaande Wetsontwerp hierby gepubliseer word in terme van Reël 127 (2) van die Reëls van Prosedure van die Noord-Kaapse Wetgewer.

Enige kommentaar of opmerkings daaromtrent moet gestuur word aan die Adjunksekretaris: Parlementêre Dienste, Noord-Kaapse Wetgewer, Privaatsak X5016, Kimberley, om hom nie later as **26 April 1996** te bereik nie.

P. HUMA

Adjunksekretaris: Noord-Kaapse Wetgewer

REPUBLIC OF SOUTH AFRICA

**NORTHERN CAPE POWERS AND PRIVILEGES OF THE
PROVINCIAL LEGISLATURE AMENDMENT BILL**

(As introduced)

(THE PREMIER)

[B 3-96]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP DIE NOORD-KAAPSE WET OP
DIE BEVOEGDHEDE EN VOORREGTE VAN DIE
PROVINSIALE WETGEWER**

(Soos ingedien)

(DIE PREMIER)

[W 3-96]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with solid line indicate insertions in existing enactments.

BILL

To amend and consolidate the Northern Cape Powers and Privileges of the Provincial Legislature Act, 1994, so as to give financial autonomy to the Legislature; to make provision for powers and functions of an Accounting Officer; to define or redefine certain expressions; to provide for textual changes; and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of the Northern Cape, as follows:-

Amendment of section 1 of Act 6 of 1994

1. Section 1 of the Northern Cape Powers and Privileges of the Legislature Act, 1994 (hereinafter referred to as the principal Act), is hereby amended:-
 - (i) by the substitution for the definition of "committee" of the following definition: " 'committee' means any committee consisting of members and established in terms of the Rules referred to in section 58 of the Constitution;"
 - (ii) by the insertion after the definition of "committee" of the following definition: "'house' means members of the Provincial Legislature assembled together in the Chamber for the purposes of conducting parliamentary business;"
 - (iii) by the substitution for the definition of "officer" of the following definition: " 'officer' means the Secretary, and any other person [who may be] appointed to the staff of the Provincial Legislature;"
 - (iv) by the insertion after the definition of "officer" of the following definition:

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrapping uit bestaande verordeninge, aan.

_____ Woorde met 'n volstreep daaronder dui invoeging in bestaande verordeninge aan.

WETSONTWERP

Tot wysiging en konsolidasie van die Noord-Kaapse Wet op die Bevoegdhede en Voorregte van die Provinsiale Wetgewer, 1994, ten einde finansiële selfbestuur aan die Wetgewer te verleen; voorsiening te maak vir bevoegdhede en funksies van die rekenpligtige beampte; sekere uitdrukkings te omskryf of te heromskryf; voorsiening te maak vir tekstuële veranderings; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Provinsiale Wetgewer van die Noord-Kaap, soos volg:

Wysiging van artikel 1 van Wet 4 van 1994

1. Artikel 1 van die Noord-Kaapse Wet op die Bevoegdhede en Voorregte van die Provinsiale Wetgewer, 1994 (hieronder die Hofwet genoem), word hierby gewysig:-
 - (i) deur die omskrywing van "komitee" deur die volgende omskrywing te vervang:
" 'komitee' 'n komitee wat uit lede bestaan en wat ingevolge die Reëls in artikel 58 van die Grondwet bedoel gestig is";
 - (ii) deur na die omskrywing van "komitee" die volgende omskrywing in te voeg:
" 'huis' lede van die Provinsiale Wetgewer wat saam in die Kamer byeengekom het om parlementêre werksaamhede te verrig.
 - (iii) deur die omskrywing van "amptenaar" deur die volgende omskrywing te vervang:
" 'amptenaar' die Sekretaris, en enigiemand wat in die personeel van die Provinsiale Wetgewer aangestel [word] is".
 - (iv) deur na die omskrywing van "amptenaar" die volgende omskrywing in te voeg:

" 'recess' means the period between two consecutive terms determined by the Speaker during which the Legislature's legislative operations are closed or suspended;";

- (v) by the substitution for the definition of "Secretary" of the following definition: " 'Secretary' means the Secretary to the Provincial Legislature appointed in terms of section 143 of the Constitution, and includes any officer acting on his or her behalf;"
- (vi) by the insertion after the definition of "Secretary" of the following definition: "'session' means the period determined by the Speaker during which the Legislatures' legislative operations are in progress or unsuspended;"
- (vii) by the substitution for the definition of "Speaker" of the following definition: "'Speaker' means the Speaker of the Provincial Legislature referred to in section 131 of the Constitution, and shall include the Deputy Speaker;"

Amendment of section 9 of Act 6 of 1994

2. Section 9 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) All fines payable under subsection (1) may be recovered by way of civil action in a competent court by the [Member of the Executive Council responsible for Finance] Speaker, if authorized by resolution of the Provincial Legislature to institute legal proceedings for the recovery thereof."

Amendment of section 10 of Act 6 of 1994

3. Section 10 of the principal Act is hereby amended by the addition after the expression 'person' of the expression 'member or officer'.

Amendment of section 11 of Act 6 of 1994

4. Section 11 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Notwithstanding anything to the contrary contained in any other law but subject to the provisions of section 6(1), no person shall arrest any member or officer within the immediate precincts of the chambers of the Provincial Legislature, or serve any summons or subpoena upon him or her thereat, while the Provincial Legislature is [sitting] in session".

Insertion of section 28A in Act 6 of 1994

5. The following Chapter is hereby inserted in the principal Act after section 28:

"CHAPTER 6

FINANCIAL ARRANGEMENTS

Control of expenditure and appropriation of moneys:

" 'reses' die tydperk tussen twee opeenvolgende terme deur die Speaker bepaal waarbinne die wetgewende werksaamhede van die Wetgewer gesluit of opgeskort is;"

- (v) deur die omskrywing van "Sekretaris" deur die volgende omskrywing te vervang:
" 'Sekretaris' die Sekretaris van die Provinsiale Wetgewer ingevolge artikel 143 van die Grondwet aangestel, en sluit in enige amptenaar wat namens hom of haar optree;"
- (vi) deur die omskrywing van "Speaker" deur die volgende omskrywing te vervang:
" 'Speaker' die Speaker van die Provinsiale Wetgewer in artikel 131 van die Grondwet bedoel, en sluit die Adjunk-Speaker in;"

Wysiging van artikel 9 van Wet 6 van 1994

2. Artikel 9 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Alle boetes kragtens subartikel (1) betaalbaar, kan by wyse van 'n siviële aksie in 'n bevoegde hof deur die [Lid van die Uitvoerende Raad verantwoordelik vir Finansies] Speaker verhaal word indien hy of sy deur die Provinsiale Wetgewer gemagtig is om geregtelike stappe vir die verhaal daarvan te doen."

Wysiging van artikel 10 van Wet 6 van 1994

3. Artikel 10 van die Hoofwet word hierby gewysig deur na die uitdrukking "persoon" die volgende uitdrukking "lid of amptenaar" in te voeg.

Wysiging van artikel 11 van Wet 6 van 1994

4. Artikel 11 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Ondanks andersluidende bepalings van die een of ander wet, maar behoudens die bepalings van artikel 6(1), mag niemand 'n lid of amptenaar in die onmiddellike nabyheid van die lokaal van die Provinsiale Wetgewer in hegtenis neem, of 'n dagvaarding of getuiedagvaarding aldaar aan hom of haar beteken, onderwyl die Provinsiale Wetgewer [in sitting] op sessie is nie."

Invoeging van artikel 28A van wet 6 van 1994

5. Die volgende hoofstuk word hierby in die Hoofwet na artikel 28 ingevoeg:

"HOOFSTUK 6

Finansiële reëlins met betrekking tot die Provinsiale Wetgewer:

28A. (1) The control of expenditure and the appropriation of moneys for the services of the Provincial Legislature shall be vested in the Legislature itself, and authorisation for such expenditure, and appropriation of moneys, as well as receipts issued on its behalf by the accounting officer, referred to in subsection 2 with reference to all matters affecting those services shall, notwithstanding anything to the contrary contained in any other law, but subject to the provisions of this section, be taken to be in all respects good, valid and effectual.

(2) Subject to the provisions of any other law and unless otherwise directed by the Legislature, the Secretary shall be the accounting officer charged with the collection, receipt, custody and payment of moneys for the services of the Provincial Legislature, as well as the receipt, custody and control of property acquired for the administration of the Provincial Legislature, and the Secretary shall keep proper accounts of all moneys received and paid out by him or her, and of all his or her financial transactions.

(3) The Secretary shall requisition the moneys required for the services of the Provincial Legislature from the Treasury and, notwithstanding anything to the contrary contained in the Exchequer Act, 1994 (Act No. 1 of 1994), the Treasury shall, on receipt of such a requisition by the Secretary, pay to the said Secretary the moneys appropriated for the services of the Provincial Legislature, or which, by virtue of the provisions of section 7 of the Exchequer Act, 1994, may be utilized therefore, or are deemed to be appropriated therefore by law, and the Treasury shall for that purpose grant the said Secretary credits.

(4) The Secretary shall maintain at a Bank registered as such under the Banks Act, 1990 (Act No. 94 of 1990), as amended, and approved by the Legislature an account into which shall be deposited all moneys received by him or her and from which payments shall be made by him or her, and the Secretary may authorise an officer or officers to sign the cheques necessary for the said payments.

(5) Notwithstanding anything to the contrary contained in any other law, the Legislature may approve that a saving under a main division of the Vote Provincial Legislature in an Appropriation Act may be applied towards the defrayment of excess expenditure under another main division, or of expenditure under a new main division of that Vote: Provided that amounts appearing in "column 2" of a schedule to such an Appropriation Act in respect of the said Vote shall not be exceeded, and the savings thereon shall not be applied for a purpose other than that for which the money was granted as indicated in such schedule.

(6) At the end of each financial year the Secretary shall cause statements of account to be prepared showing in detail the moneys received by him or her, and the expenditure incurred by him or her during the financial year in question.

(7) The accounts of the Provincial Legislature shall, subject to the provisions of subsection (1), be investigated, examined and audited by the Auditor-General.

(8) If a person who has in terms of section 21 of the Exchequer Act been ordered to pay an amount, fails to pay such amount within the period stipulated in the notice in question, it shall:

- (a) for the purposes of the application of interest rates be deemed that a debt is created to the State;

- 28A. (1) Die beheer oor die uitgawes en die toewysing van geld vir die diens van die Provinsiale Wetgewer berus by die Wetgewer self, en magtiging vir sodanige uitgawes en toewysing van geld, asook kwitansies namens hom deur die rekenpligtige beampte bedoel in subartikel (2) uitgereik, ten aansien van bepalings van die een of ander wet, maar behoudens die bepalings van hierdie artikel, is in alle opsigte goed, geldig en bindend.
- (2) Behoudens die bepalings van die een of die ander wet en tensy anders deur die Wetgewer gelas word, die Sekretaris die rekenpligtige beampte belas met die versameling, ontvangs, bewaring en betaling van geld vir die diens van die Provinsiale Wetgewer, asook die ontvangs, bewaring en beheer van eiendom wat vir die administrasie van die Provinsiale Wetgewer verkry is en die Sekretaris moet behoorlik boekhou van al die geld wat deur hom/haar ontvang of uitbetaal is, en van al sy/haar finansiële transaksies.
- (3) Die Sekretaris moet die geld wat nodig is vir die diens van die Provinsiale Wetgewer deur middel van 'n rekwisisie van die Tesourie aanvra en, ondanks andersluidende bepalings in die Skatkiswet, 1994 (Wet Nr. 1 van 1994), vervat die Tesourie betaal by ontvangs van so 'n rekwisisie deur die Sekretaris, die geld toegewys vir die dienste van die Provinsiale Wetgewer, of wat kragtens artikel 7 van die Skatkiswet, 1994 daarvoor gebruik mag word, of is beskou as daarvoor by wet toegewys, en die Tesourie sal vir doeleindes daarvan aan die Sekretaris krediet verleen.
- (4) Die Sekretaris hou by 'n Bank wat as sodanig kragtens die Bankwet, 1990 (Wet Nr 94 van 1990), wat geregistreer is en wat deur die Wetgewer goedgekeur is 'n rekening open waarin alle gelde deur hom/haar ontvang, gestort moet word en waaruit alle betalings deur hom/haar gedoen moet word, en die Sekretaris kan 'n amptenaar of amptenare magtig om die tjeks te teken wat vir bedoelde betaling nodig is.
- (5) Ondanks andersluidende bepalings van die een of ander wet kan die Wetgewer goedkeur dat 'n besparing onder 'n Begrotingswet aangewend word ter bestryding van ooruitgawes onder 'n ander hoofindeling, of van uitgawes onder 'n nuwe hoofindeling van daardie Begrotingspos. Met dien verstande dat die bedrae wat in "Kolom 2" van 'n bylae by so 'n Begrotingswet ten opsigte van genoemde begrotingspos voorkom, nie oorskry mag word nie, en besparing daarop nie aangewend mag word nie vir 'n ander doel as dié waarvoor die geld toegestaan is soos in so 'n bylae aangedui nie.
- (6) Aan die einde van elke boekjaar moet die Sekretaris rekeningstate laat opstel wat met die gepaste besonderhede die geld deur hom/haar ontvang en die uitgawes deur hom/haar aangegaan gedurende die betrokke boekjaar, opgee.
- (7) Die rekenings van die Provinsiale Wetgewer word, behoudens die bepalings van subartikel (1), deur die Ouditeur-generaal ondersoek, nagesien en geouditeer.
- (8) Indien iemand wat ingevolge artikel 21 van die Skatkiswet gelas is om 'n bedrag te betaal, versuim om die bedrag te betaal binne die tydperk in die betrokke kennisgewing bepaal, word dit:
- (a) vir die doeleindes van die toepaslike rentekoers geag dat 'n skuld aan die Staat ontstaan;

- (b) subject to the provisions of that section, be lawful for the accounting officer to deduct such amount from the emoluments of the person concerned.
- (9)(a) The provisions of sections 7, 15, 20 and 21 of the Exchequer Act and not other provisions thereof, shall *mutatis mutandis* apply in respect of the services, vote, accounts, moneys and property of the Provincial Legislature, and in such application, any reference in the Exchequer Act:
- (i) to an accounting officer shall be deemed to be a reference to the Secretary;
 - (ii) in section 20(1)(c) to the Treasury shall be deemed to be a reference to the Speaker; and
 - (iii) in section 21:
 - (aa) to the responsible Member and the Treasury shall be deemed to be a reference to the Speaker;
 - (bb) to a person who is or was in the employ of the Provincial Administration, shall be deemed to be a reference to a person who is or was in the employ of the Provincial Legislature.
- (b) A reference in any other law to a department or head of department shall be deemed to be a reference to the Provincial Legislature and the Secretary, respectively.
- (10) Subject to the authority of the Legislature, the accounting officer shall, in exercising control over expenditure and appropriation of moneys, not be precluded from exercising any other powers not specifically provided for in this Act.

Short title

6. This Act shall be called the Northern Cape Powers and Privileges of the Provincial Legislature Amendment Act, 1996 and shall come into operation on a date fixed by the Premier in the Provincial Gazette.

(b) behoudens die bepalinge van daardie artikel, remagtig vir die rekenpligtige beampte om so 'n bedrag van die betrokke persoon se besoldiging af te trek.

(9)(a) Die bepalinge van artikels 7, 15, 20 en 21 van die Skatkiswet, 1994, en geen ander bepalinge daarvan nie, is mutatis mutandis van toepassing op die diens, begrotingspos, rekenings, geld en goed van die Provinsiale Wetgewer, en by sodanige toepassing word 'n verwysing in die Skatkiswet:

(i) na 'n rekenpligtige beampte geag 'n verwysing na die Sekretaris te wees;

(ii) in artikel 20(1)(c) na die Tesourie geag 'n verwysing na die Speaker te wees; en

(iii) in artikel 21:

(aa) na die verantwoordelike Lid en die Tesourie geag 'n verwysing na die Speaker te wees;

(bb) na die persoon wat in diens van die Provinsiale Administrasie is of was, geag 'n verwysing na 'n persoon wat in diens is of was van die Provinsiale Wetgewer.

(b) 'n Verwysing in die een of die ander wet na 'n departement of hoof van departement word 'n verwysing na die Provinsiale Wetgewer en die Sekretaris, respektiewelik, geag.

(10) Behoudens die Wetgewer se magtiging, word die rekenpligtige beampte in die uitoefening van beheer oor die uitgawes en die toewysing van geld, nie belet om enige ander bevoegdhede waarvoor geen spesifieke voorsiening in hierdie Wet gemaak is, uit te oefen nie.

Kort titel

6. Hierdie Wet heet die Wysigingswet op die Bevoegdhede en Voorregte van die Provinsiale Wetgewer, 1996, en tree in werking op 'n datum deur die Premier by proklamasie in die Provinsiale *Koerant* bepaal.

MEMORANDUM

IN TERMS OF RULE 128 OF THE STANDING RULES OF THE PROVINCIAL LEGISLATURE ON THE NORTHERN CAPE POWERS AND PRIVILEGES OF THE PROVINCIAL LEGISLATURE AMENDMENT BILL, 1996

(I) INTRODUCTION AND REASONS FOR THE BILL

Pursuant to section 55 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), which provides that

"Parliament shall have full power to control, regulate and dispose of its internal affairs, and shall have all such other powers, privileges and immunities as may, subject to the Constitution, be prescribed by an Act of Parliament"

and in conformity with the constitutional principle enshrined in Schedule 4 and subsection 6 embodied in section 31 of the Powers and Privileges of Parliament Act, 1963 (Act No. 91 of 1963), which provides that it is not competent for the Treasury to question the estimates of expenditure required on the Houses of Parliament;

Due to the uniqueness of the position of the Legislature, it is desirable to create a position through legislation whereby the Legislature would largely be exempted from Treasury control as far as expenditure and appropriation of moneys is concerned.

Therefore, in view of the doctrine of the Separation of Powers, and with the Northern Cape Provincial Legislature being a separate entity from the Executive, and in order to enable the Legislature to carry out its duties and functions effectively and efficiently, provision has to be made for its financial autonomy.

(II) IMPACT OF THE BILL

The most important implication of the Bill is that a separate financial system for the Legislature shall be established. The autonomy of the Provincial Legislature will

result in the delegation of certain key powers, functions and duties to the and the offices of the Speaker and the Secretary, respectively.

The Office of the Secretary which will assume the elaborate functions designated to the Accounting Officer, shall have added to it other duties, for the use of money appropriated for the services of the Legislature (the responsibility for financial management and accountability).

The ability of the Provincial Legislature to requisition moneys from Treasury, and to open an account in its own name with a duly registered bank, will facilitate a de-linkage of the Legislature from the overall control of the Treasury.

The Legislature, through an authorised organ, acting as its Treasury, will have the final authority over the appropriation and accountability for moneys received and used in the course of any financial year.

EXPLANATION CLAUSE BY CLAUSE.

1. Amendment of section 1 of Act 6, 1994

Sub-clause i:

Seeks to give a definition of the word "committee" so as to put it in line with the constitution.

Sub-clause ii:

Seeks to include and define house in the definitions.

Sub-clause iii:

Seeks to define "officer" as a person who is appointed to the staff of the Provincial Legislature and not one who may be appointed.

Sub-clause iv

Seeks to include and define recess in the definitions.

Sub-clause v:

Seeks to widen the definition of "Secretary" so as to include any officer duly authorised to act on behalf of the Secretary.

Sub-clause vi:

Seeks to include and to define session in the definitions.

Sub-clause vii:

Seeks to widen the definition of "Speaker" so as to include the Deputy Speaker.

2. Amendment of section 9

Consequential amendment of section 9 (2) of the Principal Act by reason of the exclusion of Member of the Executive Council (MEC) responsible for Finance aimed at giving authority to the Speaker to recover fines payable to the Legislature.

3. Amendment of section 10

Consequential amendment of section 10 by reason of the addition of the expression "member or officer" for the purpose of increasing the ambit of persons prohibited from causing disturbance in, around or within the proximity of the precincts of the Legislature.

4. Amendment of section 11

Consequential amendment of section 11 of the principal Act by reason of the inclusion of the expression "officer" and "session" in order to protect other functionaries of the Legislature from service of summons or subpoena not only when the Provincial Legislature is sitting, but at any time once the session of Legislature has commenced.

5. This section inserts chapter 6 in the principal Act.

CHAPTER 6

FINANCIAL ARRANGEMENTS

28A. Control of expenditure and appropriation of moneys

1. The Powers of the Treasury are now vested upon the Legislature.
2. This sub-clause provides for the Secretary to be the Accounting Officer of the Legislature.
3. This sub-clause provides for the procedure for obtaining money by requisitioning from the Treasury.
4. The sub-clause provides for the Secretary to maintain a Bank account for the purposes of moneys received by him or her/her.
5. The sub-clause empowers the Legislature to approve application of savings under a main division of the Vote Provincial Legislature in an Appropriation Act, towards the defrayment of excess expenditure, subject to certain conditions.
6. The sub-clause obliges the Secretary to give proper accounts for the moneys received by him or her and the expenditure incurred by him or her at the end of each financial year.
7. In this sub-clause, the Provincial Legislature seeks to submit itself to the investigative authority of the Auditor-General.

8. (a) This sub-clause provides that no interest shall accrue to a debt created to the Legislature.

(b)(i) This sub-clause seeks to give authority to the Accounting Officer to order the repayment of a debt created to the Legislature; and

(ii) This sub-clause empowers the Accounting Officer to deduct such amount from the financial entitlements of the person concerned.
9. This sub-clause seeks to specify in clear and definite terms that the provisions of the Exchequer Act that may apply in respect of the services, vote, accounts, moneys and property of the Provincial Legislature shall be restricted to sections 7, 15, 20 and 21.
10. This sub-clause seeks to give to the Accounting Officer additional powers which, though not implied or provided for this or any other Act, he/she may not be precluded from exercising in pursuance as his/her functions. This additional powers shall also be subject to the authority of the Legislature.
6. This clause contains the short title.

In the process of drafting this Bill, the following persons, groups of persons and/or organisations were consulted:

1. MEC for Finance
2. Department of Finance
3. Treasury
4. Whips of Parties

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