



**FREE STATE PROVINCE**

**PROVINCIAL GAZETTE**

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**PROVINSIALE KOERANT**

**PROVINSIE VRYSTAAT**

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OFFICE OF THE PREMIER

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No. 13

18 June 1998

It is hereby notified that the Premier has assented to the following Act which is hereby published for general information:-

No. 13 of 1998: Exchequer Amendment Act, 1998

KANTOOR VAN DIE PREMIER

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No. 13

18 Junie 1998

Hierby word bekend gemaak dat die Premier die onderstaande Wet bekragtig het, wat hierby ter algemene inligting gepubliseer word:-

No. 13 van 1998: Skatkiswysigingswet, 1998

**GENERAL EXPLANATORY NOTE:**

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

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

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# ACT

**To amend the Exchequer Act, 1994, so as to empower the Treasury to maintain a Provincial Revenue Account; to insert the Schedule and to empower the Premier to amend the Schedule by Proclamation.**

**BE IT ENACTED** by the Provincial Legislature of the Free State Province as follows:-

*(Afrikaans text signed by the Premier.)  
(Assented to 10 June 1998.)*

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**Amendment of section 1 of Act 1 of 1994**

1. Section 1 of the Exchequer Act, 1994 (hereinafter referred to as the principal Act), is hereby amended - 10

(a) by the substitution for the definition of "Auditor General" of the following definition:

" 'Auditor General' means the person appointed as such in terms of section [191(2)] 189 of the Constitution;"; 15

(b) by the substitution for the definition of "department" of the following definition:

" 'Department' means a department of the Province mentioned in the first column of the Schedule [to the Provincial Service Commission Act, 1994 (Act No 3 of 1994)];"; 20

(c) by the substitution of the definition of "head of department" of the following definition: 25

" 'head of department' means an officer bearing the designation mentioned in the second column of the Schedule [to the Provincial Service Commission Act, 1994] opposite the name of the relevant department;";

(d) by the substitution of the definition of "Provincial debt" of the following definition: 30

" 'Provincial debt' means money borrowed by the Province in terms of any law or which accrued to the Province in terms of section 239 of the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993) and which is to be repaid from the Revenue Fund;"; and 35

(e) by the substitution of the definition of "the Constitution" of the following definition:

" 'the Constitution' means the Constitution of the Republic of south Africa, [1993 (Act No 200 of 1993)] 1996 (Act No 108 of 1996);".

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### Substitution of section 3 of Act 1 of 1994

2. Section 3 of the Principal Act is hereby substituted by the following section :

#### "The Exchequer Account

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3. (1) The Treasury shall maintain at a Bank an account, titled "the Account of the Exchequer of the Province", into which shall, subject to the provisions of paragraph (a) of subsection (2) be deposited all revenue.

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(2) (a) The Treasury shall appoint principal receivers of revenue in respect of all provincial revenue received by the Province.

(b) The principal receiver of revenue shall cause the revenue of his or her office, and other departments, received from time to time less the amount of any drawbacks and other refunds, to be deposited in the Exchequer Account or in any account which has been opened with the written authority of the Treasury in terms of section 11.

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(c) Such deposits shall be made on each appropriate working day.

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(3) (a) The Bank shall on each appropriate working day render to the Treasury, in such form as the Treasury may determine, returns of -  
[Revenue deposited in the Exchequer Account.]

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(i) revenue deposited in the Exchequer Account in terms of subsection (2)(b); and

(ii) revenue deposited in another account in terms of subsection (2)(b).

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(b) Moneys deposited in terms of subsection 2(b) at an account other than the account referred to in subsection (1) shall for the purposes of sections 10(1)(a) and 14(2) be deemed to be moneys in the Exchequer Account.

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(4) The Treasury may utilise any moneys in the Exchequer Account for the defrayment of expenditure chargeable to the account mentioned in section 2.

- (5) The Treasury shall, subject to the provisions of this Act, ensure that there shall at all times be sufficient moneys in the Exchequer Account for transfer in accordance with the provisions of section 9(1)."

**Substitution of section 6 of Act 1 of 1994**

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3. Section 6 of the Principal Act is hereby substituted by the following section:

"[Column 2 items] Utilisation of savings in certain circumstances

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6. (1) When money has been appropriated by an appropriation Act, the accounting officer may, unless the Treasury directs otherwise, approve that a saving under a main division, or a subdivision of a main division, of a vote be applied towards the defrayment of excess expenditure under another main division, or a subdivision of a main division, or of expenditure under a new main division or subdivision of the same vote.

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- [1] (2) The amounts appearing in "Column 2" of a schedule to an appropriation Act in respect of any vote shall, subject to the provisions of section 7(1)(b)(ii), not be exceeded, and savings thereon may, with the approval of the responsible Member, be applied towards the defrayment of any other expenditure for which insufficient appropriation has been made under that vote.

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- [2] (3) An amount appearing in "Column 2" of a schedule to an appropriation Act in respect of any vote, may be increased with such a portion of the moneys appropriated for the Vote: Improvement of conditions of service of the Province, as the accounting officer in consultation with the Treasury may determine."

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**Amendment of section 9 of Act 1 of 1994**

4. Section 9 of the principal Act is hereby amended as follows -

- (a) by the substitution for subsection (1) of the following subsection:

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- "9. (1) In addition to the Exchequer Account, the Treasury shall maintain at the Bank an account entitled the Account of the Paymaster-General and may cause so much of an moneys -

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- (a) appropriated by law;

- (b) which may, by virtue of the provisions of section 7, be utilised for any purpose; or

(c) deemed to be appropriated by law, [as have been requisitioned in terms of subsection (3), to be transferred from the Exchequer Account to the Paymaster-General's Account.]

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as have been requisitioned in terms of subsection (3), to be transferred from the Exchequer Account to the Paymaster-General's Account."

(b) by the substitution for subsection (10) of the following subsection:

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"(10) The Treasury shall limit the amount of its requisitions on the National Treasury for credits in respect of moneys accruing to it in terms [of section 155(2)(c)] of the Constitution as a charge against the National Revenue Account, to amounts necessary to defray its current expenditure, and the National Treasury shall grant credits for such amounts."

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#### Amendment of section 11 of Act 1 of 1994

5. Section 11 of the Principal Act is hereby amended as follows -

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"11. (1) An account in respect of Revenue may only be opened on written authority of the Treasury at a bank and where an account has been so opened, the relevant bank, subject to section [157(2)] 230(1) of the Constitution, shall not allow the account to be overdrawn."

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#### Amendment of section 14 of Act 1 of 1994

6. Section 14 of the principal Act is hereby amended as follows -

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(a) by the addition of the following subsection:

"(3A) As soon as practicable after the accounts in respect of any financial year have been closed, but in any case within five months after the close of a financial year, the principal receiver of revenue shall prepare statements of the other account referred to in section 3(2)(b)."

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(b) by the substitution for subsection (4) of the following subsection:

"(4) The treasury shall within the period referred to in subsections (3) and (3A), also prepare statements, in support of the Revenue Account in respect of the financial year in question, of the receipts under the various headings shown in the estimates of revenue and of the transfers from the Exchequer Account of each of the votes shown in any appropriation Act for that year."

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(c) by the substitution of subsection (5) of the following subsection:

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“(5) The Treasury shall transmit statement referred to in subsection (3), (3A) and 4 to the Auditor General for examination as soon as they have been prepared.”.

**Amendment of section 17 of Act 1 of 1994**

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7. Section 17 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“17. (1) The Treasury may notwithstanding the provisions of section 16 charge a person who is not an accounting officer with the responsibility of accounting for -

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(a) State moneys received and paid out by that person;

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(b) State property acquired, received, kept or disposed of by that person, [in connection with a trading and related account, established under section 12(1), or a particular portion of a vote whereof accounts are kept separately.]

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in connection with a trading and related account, established under section 12(1), or a particular portion of a vote whereof accounts are kept separately.”.

**Amendment of section 18 of Act 1 of 1994**

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8. Section 18 of the principal Act is hereby amended -

(a) by the substitution for subsection (1) of the following subsection:

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“18. (1) Subject to the provisions of this Act and any other law, the Treasury shall have the power to -

(a) give guidance in, and exercise control over, State moneys and other State property to bring about the systematic and orderly management thereof and to promote efficiency and economy in the utilisation thereof;

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(b) direct that such expenditure charged against the Revenue Account, as it may determine, shall not be incurred without its approval having been obtained;

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- (c) approve fees or other charges or the rates, scales or tariffs of fees or other charges not fixed or capable of being fixed by or in terms of any law and relating to revenue accruing to or expenditure from the Revenue Fund, and to direct that no such fee or charge or rate, scale or tariff thereof shall be introduced before the approval of the Treasury has been obtained; 5
- (d) grant approval for the rendering of a free service; 10
- (e) grant approval for the write-off of a loss of State money and other State property;
- (f) grant approval for the variation or cancellation of contracts to the detriment of the State; 15
- (g) require accounting officers to submit particular inputs in respect of budget matter to it, and in respect of such inputs - 20
  - (i) to analyse them and make recommendations thereabout to the responsible Member;
  - (ii) to make them or processed information thereof available to the National Treasury on its request; 25
- (h) require any accounting officer to submit to it information, returns, documents, explanations and motivations in regard to any matter affecting State moneys or other State property of the Province; 30
- (i) grant approval for the settlement of a claim by or against the Province or for the waiver of a claim by the Province;
- (j) authorise or condone non-compliance by an accounting officer with an instruction or other written request, stipulation or condition of the Treasury in connection with any matter; 35
- (k) investigate, and inspect systems for the control over, and administration of State moneys and other State property of the Province and prescribe additional systems, other than those referred to in section 13; 40
- (l) determine against which vote or subdivision thereof expenditure on a service should be charged; 45

- (m) determine the terms and conditions on which Revenue due to the Province may be paid and on which State moneys of the Province may be disbursed;
- (n) approve remissions, as an act of grace, of moneys due to the Province; 5
- (o) approve refunds of Revenue;
- (p) approve payments, as an act of grace, from State money of the Province; 10
- (q) approve gifts of State moneys of the Province and other movable State property of the Province or the acceptance of gifts to the Province; 15
- (r) approve the alienation, letting or other disposal of movable State property of the Province;
- (s) afford guidance in the handling of and exercise control over all trust money and trust property temporarily deposited or left in the care of an accounting officer or other person in the service of the Province; 20
- (t) give guidance in the application of norms and standards prescribed by the National Treasury in respect of improvements to immovable property financed in full or in part from the Revenue Fund; 25
- (u) approve acceptance of sponsorships to the Province [Provided that when the amount involved in any case contemplated in paragraph (n), (o), (p), or (q), other than any such case in connection with movable State property, exceeds R100 000 or relates to a tax, other duty or impost by law, such remission, refund, payment or gift shall not be made unless moneys for the purpose have been appropriated by the provincial legislature: Provided further that if, in the opinion of the Provincial Treasury, the circumstances connected with the payment of any such tax, other duty or impost justify a refund as an act of grace of the whole or a portion of the amount in question, the Treasury may approve such refund to an amount, not exceeding R100 000 as a charge against the vote concerned.] 30 35 40



Provided that when the amount involved in any case contemplated in paragraph (n), (o), (p) or (q) other than any such case in connection with movable State property, exceeds R100 000 or relates to tax, other duty or impost by law, such remission, refund, payment or gift shall not be made unless moneys for the purpose have been appropriated by the provincial legislature: Provided further that if, in the opinion of the Treasury, the circumstances connected with the payment of such tax, other duty or impost justify a refund as an act of grace of the whole or portion of the amount in question, the Treasury may approve such refund to an amount, not exceeding R100 000 as a charge against the vote concerned."

(b) by the substitution for subsection 4 of the following subsection:

"(4) Where a voucher or other proof of receipt or payment is in any way defective or has been lost or destroyed and -

(a) the Treasury in the case of accounts of accounting officers and other persons in the service of the province;

(b) subject to the provisions of any other law, the executive authority of a statutory body, in the case of such accounts of such statutory body, **[is satisfied with the explanation of the responsible person, the Treasury, or the executive authority of a statutory body, as the case may be, may make an order dispensing with the production of a voucher or such other proof or may make such other order as may appear just in the circumstances.]**

is satisfied with the explanation of the responsible person, the Treasury, or the executive authority of a statutory body, as the case may be, may make an order dispensing with the production of a voucher or such other proof or may make such other order as may appear just in the circumstances."

#### **Amendment of section 20 of Act 1 of 1994**

9. Section 20 of the Principal Act is hereby amended by the substitution for subsection (5) of the following subsection :

“(5) Unauthorized expenditure referred to in subsection (4) or any part thereof determined by the provincial legislature shall not form a charge against a fund or account concerned until it has been authorized, validated or made available in accordance with the normal budgetary procedure applicable to the fund or account concerned: Provided that any unauthorized expenditure which has not been authorized or validated shall [not] be recovered from the accounting officer if he cannot or is unwilling to recover the amount concerned from the beneficiary or the person responsible for the unauthorized expenditure.” 5

**Amendment of section 21 of Act 1 of 1994** 10

10. Section 21 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “21. (1) If a person who is or was in the employ of the Province and caused the Province a loss or damage because he - 15
- (a) failed to collect State moneys for the collection of which he is or was responsible; 20
  - (b) is or was responsible for an irregular payment of State moneys or for a payment of such moneys not supported by a proper voucher; 25
  - (c) is or was responsible for fruitless expenditure of State moneys due to an omission to carry out his duties; 25
  - (d) is or was responsible for a deficiency in, or for the destruction of, or damage to State moneys, stamps, face-value documents and forms having a potential value, securities, equipment, stores or any other State property; 30
  - (e) due to an omission to carry out his duties or in any other manner, is or was responsible for a claim against the Province, [the accounting officer concerned or the holder of a post designated by the Treasury shall determine the amount of such loss or damage or the amount necessary to replace State property in which there is a deficiency or which was destroyed, as prescribed by the Instructions and, subject to the provisions of subsection (5), order, by notice in writing, the said person to pay to him, within thirty days from the date of such notice, the amount so determined.] 35 40

the accounting officer concerned or the holder of a post designated by the Treasury shall determine the amount of such loss or damage or the amount necessary to replace State property in which there is a deficiency or which was destroyed, as prescribed by the Instructions and, subject to the provisions of subsection (5), order, by notice in writing, the said person to pay to him, within thirty days from the date of such notice, the amount so determined.”.

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**Amendment of section 22 of Act 1 of 1994**

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11. Section 22 of the Principal Act is hereby amended as follows -

(a) by substituting for subsection (1) of the following subsection:

“22. (1) If a responsible Member in the Executive Council and, if he is not the member of the Executive Council responsible for financial affairs, also the member of the Executive Council responsible for financial affairs, is convinced that the provisions of subsection (3) have been complied with, the said responsible Member, with the concurrence of the member of the Executive Council responsible for financial affairs, if he is not such responsible Member, and after the provisions of section [157(3)] 218 of the Constitution have been complied with, may, from time to time, subject to the conditions of subsection (2) and the conditions which he may with the concurrence of the member of the Executive Council responsible for financial affairs, if he is not such responsible Member, determine, including the waiver of such legal exception as he may deem fit, furnish a guarantee in respect of the financial obligations arising from a loan granted or to be granted by a local government or by a board or body established by or under any law, hereinafter referred to as a body corporate, situated within the Province.”.

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(b) by substituting for subsection (6) of the following subsection:

“(6) Notwithstanding anything to the contrary in this Act or any other law, a guarantee by a Province in respect of the financial obligations arising from a loan shall be furnished only in terms of this section and subject to the provisions of section [157(3)] 218 of the Constitution.”.

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**Insertion of section 26A in Act 1 of 1994**

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12. The following section is hereby inserted in the Principal Act after section 26:

**“Amendment of Schedule**

**26A.** The Premier may amend the Schedule by proclamation in the *Provincial Gazette*, which amendment, if he or she deems it necessary, may be effected retrospectively.”.

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**Insertion of Schedule in Act 1 of 1994**

13. The following Schedule is hereby inserted in the Principal Act after section 27:

**“SCHEDULE**

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**DEPARTMENTS AND HEADS OF DEPARTMENT**

<b><u>COLUMN I</u></b>	<b><u>COLUMN II</u></b>	
<u>Department of Education</u>	<u>Head: Education</u>	
<u>Department of Environmental Affairs and Tourism</u>	<u>Head: Environmental Affairs and Tourism</u>	20
<u>Department of Finance, Expenditure and Economic Affairs</u>	<u>Head: Finance, Expenditure and Economic Affairs</u>	
<u>Department of Health</u>	<u>Head: Health</u>	25
<u>Department of Local Government and Housing</u>	<u>Head: Local Government and Housing</u>	
<u>Department of Public Works, Roads and Transport</u>	<u>Head: Public Works, Roads and Transport</u>	30
<u>Department of Safety and Security</u>	<u>Head: Safety and Security</u>	
<u>Department of Social Welfare</u>	<u>Head: Social Welfare</u>	35
<u>Department of Sport, Culture, Science And Technology</u>	<u>Head: Sport, Culture, Science and Technology</u>	
<u>Office of the Premier</u>	<u>Head: Office of the Premier”.</u>	40

**Short title**

14. This Act shall be called the Exchequer Amendment Act, 1998.

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