

*(English text signed by the President.)
(Assented to 16 April 2003.)*

ACT

To provide for the equitable division of revenue anticipated to be raised nationally among the national, provincial and local spheres of government for the 2003/2004 financial year and the reporting requirements for allocations pursuant to such division; to permit the withholding and the delaying of payments in certain circumstances; to provide for liability for costs incurred in litigation in violation of the principles of co-operative governance and intergovernmental relations; to regulate the adoption of local government budgets; and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 214(1) of the Constitution requires an Act of Parliament to provide for—

- (a) the equitable division of revenue raised nationally among the national, provincial and local spheres of government;
- (b) the determination of each province's equitable share of the provincial share of that revenue; and
- (c) any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations may be made;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise, a word to which a meaning has been assigned in the Public Finance Management Act, 1999 bears the same meaning, and—

- (i) **"accredited bank account"** means—
 - (a) in respect of a province, the primary bank account of the provincial Revenue Fund, which the head official of the provincial treasury has certified to the National Treasury as the bank account into which allocations in terms of this Act must be deposited; and
 - (b) in respect of a municipality, the primary bank account of a municipality, which the municipal manager has certified to the national accounting officer responsible for local government as the bank account into which allocations in terms of this Act must be deposited;
- (ii) **"Director-General"** means the Director-General of the National Treasury;
- (iii) **"head official of the provincial treasury"** means the head of the provincial department responsible for financial matters in the province;
- (iv) **"Intergovernmental Fiscal Relations Act"** means the Intergovernmental Fiscal Relations Act, 1997 (Act No. 97 of 1997);
- (v) **"municipality"** means a municipality established in terms of the Municipal Structures Act;
- (vi) **"municipal accounting officer"** means the municipal manager of a municipality;
- (vii) **"Municipal Structures Act"** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

- (viii) **“Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)
- (ix) **“next financial year”** means the financial year commencing on 1 April 2004 and ending on 31 March 2005;
- (x) **“payment schedule”** means an instalment schedule which sets out— 5
 - (a) the amount of each instalment of an equitable share or any other allocation to be transferred to a province or municipality for the financial year;
 - (b) the date on which each such instalment must be paid; and
 - (c) to whom, and to which accredited bank account, each such instalment must be paid; 10
- (xi) **“prescribe”** means prescribe by regulation in terms of section 33 ;
- (xii) **“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (xiii) **“receiving officer”** means— 15
 - (a) in respect of a Schedule 4 allocation transferred to a province, the head official of a provincial treasury;
 - (b) in respect of a Schedule 5 allocation transferred to a province, the accounting officer of a provincial department which receives such allocation; or 20
 - (c) in respect of a Schedule 6 and 6A allocation transferred to a municipality, the municipal accounting officer of that municipality;
- (xiv) **“transferring national officer”** means the accounting officer responsible for a national department which transfers to a province or municipality a Schedule 5, 6 or 6A allocation, but excludes the accounting officer of the National Treasury in respect of an allocation listed in those Schedules and which is on the vote of the National Treasury; and 25
- (xv) **“transferring provincial officer”** means the accounting officer responsible for a provincial department which receives a Schedule 4, 6 or 6A allocation for the purpose of transferring it to a municipality in the relevant province. 30

PART I

OBJECTS OF ACT

Promoting co-operative governance in intergovernmental budgeting

2. The objects of this Act are to—
- (a) provide for the equitable division of revenue raised nationally among the three spheres of government; 35
 - (b) promote co-operative governance and principles of intergovernmental relations on budgetary matters;
 - (c) promote better co-ordination between policy, planning, budget preparation and execution processes; 40
 - (d) promote predictability and certainty in respect of all allocations to provincial and local governments in order that such governments may plan their budgets over a multi-year period;
 - (e) promote transparency and equity in all allocations, including in respect of the criteria for their division; 45
 - (f) promote accountability for the use of public resources by ensuring that all transfers are reflected on the budgets of benefiting provincial and local governments; and
 - (g) ensure that legal proceedings between organs of state of the three spheres of government are avoided. 50

PART II**EQUITABLE SHARE ALLOCATIONS****Equitable division of revenue anticipated to be raised nationally among spheres of government**

3. (1) Revenue anticipated to be raised nationally in respect of the financial year is divided among the national, provincial and local spheres of government for their equitable share as set out in Column A of Schedule 1. 5

(2) An envisaged division of revenue anticipated to be raised for the next financial year and the 2005/2006 financial year, and which is subject to the provisions of the annual Division of Revenue Act in respect of those financial years, is set out in Column B of Schedule 1. 10

(3) Despite subsection (2), the Minister may, in respect of the next financial year and until the commencement of the annual Division of Revenue Act for that financial year, determine that an amount not exceeding 45 per cent of the envisaged division for the next financial year, be transferred as a direct charge against the National Revenue Fund to each province and to a municipality contemplated in section 5(1). 15

Equitable division of provincial share among provinces

4. (1) Each province's equitable share of the provincial share of revenue anticipated to be raised nationally in respect of the financial year is set out in Column A of Schedule 2. 20

(2) An envisaged division for each province of revenue anticipated to be raised nationally in respect of the next financial year and the 2005/2006 financial year, and which is subject to the provisions of the annual Division of Revenue Act for those financial years, is set out in Column B of Schedule 2.

(3) Each province's equitable share contemplated in subsection (1) must be transferred to the province in instalments in accordance with a payment schedule determined by the National Treasury, after consultation with the head officials of the provincial treasuries. 25

(4) Despite subsection (3), the National Treasury may, on such conditions as it may determine, advance funds to a province in respect of its equitable share contemplated in subsection (1), which have not yet fallen due for transfer in accordance with a payment schedule referred to in subsection (3) in respect of that province. 30

(5) The advances contemplated in subsection (4) must be set-off against transfers to the province which would otherwise become due in terms of that payment schedule.

Equitable share for local government

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5. (1) Each municipality's equitable share of the local government share of revenue anticipated to be raised nationally in respect of the financial year is set out in Column A of Schedule 3.

(2) An envisaged division for each municipality of revenue anticipated to be raised nationally in respect of the next financial and the 2005/2006 financial year, and which is subject to the provisions of the annual Division of Revenue Act for those financial years, is set out in Column B of Schedule 3. 40

(3) Each municipality's equitable share contemplated in subsection (1) must be transferred to the municipality in quarterly instalments in accordance with a payment schedule within the first three weeks of May, August, November and February. 45

(4) Despite subsection (3), the national accounting officer responsible for local government may, in consultation with the National Treasury, and on such conditions as he or she may determine, advance funds to a municipality in respect of its equitable share contemplated in subsection (1), which have not fallen due for transfer in accordance with a payment schedule referred to in subsection (3) in respect of that municipality. 50

(5) The advances contemplated in subsection (4) must be set-off against transfers to the municipality which would otherwise become due in terms of that payment schedule.

(6) Despite subsection (3), the National Treasury may, after consultation with the national accounting officer responsible for local government, delay or withhold the 55

transfer of an instalment on the grounds of a municipality's serious or persistent material breach of uniform treasury norms and standards.

(7) Such uniform treasury norms and standards include a requirement that a municipality must—

- (i) submit to the Auditor-General, not later than 30 September 2003, financial statements in respect of the 2002/2003 financial year, and submit to the Auditor-General, not later than 30 April 2003, outstanding financial statements in respect of the financial years preceding the 2002/2003 financial year; 5
- (ii) submit to the National Treasury, the relevant provincial treasury and the provincial department responsible for local government, not later than 30 June 2003, its budget for the financial year and such other budgetary information required by the National Treasury, including, but not limited to, information on the nature and extent of basic services, including free basic services, to be provided by that municipality; 10
- (iii) submit to the National Treasury, the national accounting officer responsible for local government and the provincial department responsible for local government, not later than 10 days after the end of each quarter, information on the implementation of the budget, including, but not limited to, information on actual revenue collected, actual total spending on water, electricity, refuse removal, municipal infrastructure and free basic services; and 15 20
- (iv) co-operate on financial and fiscal matters with other municipalities within the district in which it is located in order to ensure effective and efficient spending for purposes of sustainable delivery of municipal services in that municipal district.

Shortfalls and excess revenue

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6. (1) If actual revenue raised nationally in respect of the financial year falls short of the anticipated revenue set out in Schedule 1, the national government bears the shortfall.

(2) If actual revenue raised nationally in respect of the financial year is in excess of the anticipated revenue set out in Schedule 1, the excess accrues to the national government and forms part of its equitable share. 30

(3) Despite subsection (2), the national government may, by means of an adjustments budget or any other appropriation legislation, and additional to the equitable share allocation and the allocations contemplated in Part III, make further allocations to the provincial and local spheres of government from its equitable share of nationally raised revenue. 35

PART III

OTHER ALLOCATIONS TO PROVINCES AND MUNICIPALITIES

Other allocations to provinces and municipalities from national government

7. (1) Other allocations to provinces from the national government's share of revenue anticipated to be raised nationally are set out in Column A of the following Schedules: 40

- (a) Schedule 4 contains allocations to provinces for general and nationally assigned functions;
- (b) Schedule 5 contains specific-purpose allocations to provinces;
- (c) Schedule 7 contains indirect and special allocations to provinces. 45

(2) An envisaged division of anticipated allocations to provinces for the next financial year and the 2005/2006 financial year, and which is subject to the annual Division of