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GOVERNMENT NOTICE**GOEWERMENSKENNISGEWING****NOTICE 762 OF 2003****PARLIAMENT OF THE REPUBLIC OF
SOUTH AFRICA****PUBLICATION OF DRAFT *PUBLIC AUDIT BILL***

A draft *Public Audit Bill*, 2003, as presented to the Speaker of the National Assembly by the Audit Commission, is hereby published for public comment. Interested persons and institutions are invited to submit written comments on the draft legislation **before 25 June 2003**, to the following person:

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S. MFENYANA,

Secretary to Parliament

Date: 5 June 2003

KENNISGEWING 762 VAN 2003**PARLEMENT VAN DIE REPUBLIEK VAN
SUID-AFRIKA****PUBLIKASIE VAN KONSEP- *PUBLIC AUDIT BILL***

'n Konsep *Public Audit Bill*, 2003, soos aan die Speaker van die Nasionale Vergadering voorgelê deur die Ouditkommissie, word hierby vir kommentaar gepubliseer. Belanghebbende persone en instansies word genooi om **voor 25 Junie 2003** skriftelike kommentaar oor die konsepwetgewing aan die volgende persoon voor te lê:

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S. MFENYANA,

Sekretaris van die Parlement

Datum: 5 Junie 2003

BILL

To give effect to the provisions of the Constitution establishing and assigning functions to an Auditor-General; to provide for the auditing of institutions in the public sector; to provide for an Audit Commission; to repeal certain obsolete legislation; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Constitution establishes the Auditor-General as a State Institution Supporting Constitutional Democracy; and

WHEREAS the Constitution further—

- establishes the Auditor-General as the external auditor of all national and provincial state departments and municipalities, and any other institutions or accounting entities required by national or provincial legislation to be audited by the Auditor-General;
- recognises the independence of the Auditor-General, subject only to the Constitution and the law;
- requires the Auditor-General to be impartial and to perform his or her powers and functions without fear, favour or prejudice;
- prohibits any person or organ of state from interfering with the functioning of the Auditor-General;
- requires the Auditor-General to submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation, and that all reports be made public; and
- provides for the granting of additional powers and functions to the Auditor-General as prescribed by national legislation,

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

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SCHEDULE**REPEAL OF LEGISLATION**

CHAPTER 1

INTERPRETATION AND OBJECTS OF ACT

Definitions

1. (1) In this Act, unless the context indicates otherwise—
- “**audit**” means the examination or investigation, in accordance with any applicable audit standards, of those aspects to be reported on in terms of section 20 or 28; 5
- “**auditee**” means an institution or accounting entity referred to in section 4 that is or is to be audited by the Auditor-General, and includes any group of such institutions or accounting entities whose financial statements are or are to be consolidated in terms of legislation; 10
- “**audit fees**” means an amount recoverable by the Auditor-General from an auditee or other institution for the performance of an audit or other functions in terms of this Act, and includes any costs arising as a consequence of an audit or investigation carried out by the Auditor-General or an authorised auditor; 15
- “**Audit Commission**” means the Audit Commission referred to in section 47;
- “**Auditor-General**”—
- (a) as an institution, means the institution contemplated in section 181(1)(e) of the Constitution; and
- (b) as an individual, means the individual appointed as Auditor-General or acting as such; 20
- “**authorised auditor**” means a person authorised in terms of section 12 to perform or to assist in the performance of an audit referred to in section 11;
- “**delegation**”, in relation to a duty, includes an instruction or request to perform or to assist in performing the duty; 25
- “**Deputy Auditor-General**” means the person appointed in terms of section 31, and includes a person acting as the Deputy Auditor-General;
- “**constitutional institution**” has the meaning assigned to it in section 1 of the Public Finance Management Act;
- “**fruitless and wasteful expenditure**”, in relation to expenditure of the Auditor-General, means expenditure incurred by the Auditor-General that was made in vain and would have been avoided had reasonable care been exercised; 30
- “**irregular expenditure**”, in relation to expenditure of the Auditor-General, means expenditure incurred by the Auditor-General in contravention of, or that is not in accordance with, a requirement of this Act or any other legislation applicable to the Auditor-General; 35
- “**legislature**” means Parliament, a provincial legislature or a municipal council;
- “**Municipal Finance Management Act**” means the Local Government: Municipal Finance Management Act, 2003 (Act No. of 2003);
- “**municipality**” means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); 40
- “**municipal entity**” has the meaning assigned to it in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and includes the governing body of a multi-jurisdictional municipal service district referred to in section 87 of that Act; 45
- “**national department**” has the meaning assigned to it in section 1 of the Public Finance Management Act;
- “**National Treasury**” means the National Treasury established in terms of section 5 of the Public Finance Management Act;
- “**provincial department**” has the meaning assigned to it in section 1 of the Public Finance Management Act; 50
- “**provincial treasury**” has the meaning assigned to it in section 1 of the Public Finance Management Act;
- “**Public Accountants’ and Auditors’ Act**” means the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991); 55
- “**public entity**” has the meaning assigned to it in section 1 of the Public Finance Management Act;
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“**relevant legislature**” means a legislature that has a direct interest in an audit;
 “**supreme audit institution**” means the institution which, however designated, constituted or organised, exercises by virtue of the law of a country, the highest public auditing function of that country.

(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. 5

Objects of this Act

2. The objects of this Act are—
- (a) to give effect to the provisions of the Constitution establishing and assigning 10
supreme auditing functions to an Auditor-General;
 - (b) to provide for the auditing of institutions and accounting entities in the public sector; and
 - (c) to provide for the continuation of the Audit Commission— 15
 - (i) to assist and protect the Auditor-General in order to ensure the independence, impartiality, dignity and effectiveness of the Auditor-General; and
 - (ii) to advise the National Assembly.

CHAPTER 2

AUDITOR-GENERAL 20

Part 1: Status and functions

Constitutional and legal status

3. The Auditor-General—
- (a) is the supreme audit institution of the Republic;
 - (b) has full legal capacity, is independent and is subject only to the Constitution 25
and the law, including this Act;
 - (c) must be impartial and must exercise the powers and perform the functions of office without fear, favour or prejudice; and
 - (d) is accountable to the National Assembly.

Constitutional functions 30

4. (1) The Auditor-General must audit and report on the accounts, financial statements and financial management of—
- (a) all national and provincial departments;
 - (b) all constitutional institutions;
 - (c) the administration of Parliament and of each provincial legislature; 35
 - (d) all municipalities;
 - (e) all municipal entities; and
 - (f) any other institution or accounting entity required by other national or by provincial legislation to be audited by the Auditor-General.
- (2) The Auditor-General must audit and report on the consolidated financial 40
statements of—
- (a) the national government as required by section 8 of the Public Finance Management Act;
 - (b) all provincial governments as required by section 19 of the Public Finance Management Act; and 45
 - (c) a parent municipality and all municipal entities under its sole control as required by section of the Municipal Finance Management Act.
- (3) The Auditor-General may audit and report on the accounts, financial statements and financial management of— 50
- (a) any public entity listed in the Public Finance Management Act; and
 - (b) any other institution not mentioned in subsection (1) and which is—
 - (i) funded from the National Revenue Fund or a Provincial Revenue Fund or by a municipality; or

- (ii) authorised in terms of any legislation to receive money for a public purpose.

(4) In the event of any conflict between a provision of this section and any other legislation existing when this section takes effect, the provision of this section prevails. Draft legislation which amends this section may be introduced in Parliament only after the Auditor-General has been consulted. 5

Other functions

5. (1) The Auditor-General may—

- (a) at an agreed fee, and without compromising the role of the Auditor-General as an independent auditor, provide— 10
- (i) any service to an institution or accounting entity referred to in section 4(1), (2) or (3) or other body, which is commonly performed by a supreme audit institution or an external auditor; or
- (ii) advice and support to a legislature or its committees outside the scope of the Auditor-General's normal audit and reporting functions; 15
- (b) comment on any responses by an auditee to audit findings in an audit report, or responses to a report of any legislature arising from its review of an audit report;
- (c) carry out an appropriate investigation or special audit of any institution referred to in section 4(1) or (3), if the Auditor-General considers it to be in the public interest or upon the receipt of a credible complaint; 20
- (d) co-operate with persons, institutions and associations, nationally and internationally;
- (e) appoint advisory and other structures outside the administration of the Auditor-General to provide specialised advice to the Auditor-General; and 25
- (f) do any other thing necessary to fulfil the role of Auditor-General effectively.

(2) The Auditor-General may, in the public interest, report on any matter within the functions of the Auditor-General and submit such a report to the relevant legislature and to any other organ of state with a direct interest in the matter.

Part 2: Appointment and conditions of employment 30

Appointment

6. (1) Whenever it becomes necessary to appoint a person as Auditor-General, the Speaker must initiate the process in the National Assembly for the recommendation of a person to the President for appointment as Auditor-General as set out in section 193 of the Constitution. 35

(2) When making an appointment, the President must determine the term for which the appointment is made, subject to section 189 of the Constitution.

Conditions of employment

7. (1) The Audit Commission must consult the person recommended in terms of section 193 of the Constitution for appointment as Auditor-General and make recommendations to the President for the determination of the conditions of employment of that person, including an appropriate salary, allowances and other benefits. 40

(2) The salary, allowances and other benefits of a person appointed as Auditor-General must— 45

- (a) take into account the knowledge and experience of the prospective incumbent;
- (b) be substantially the same as those of the top echelon of the judiciary; and
- (c) be paid from the funds of the Auditor-General.

(3) The conditions of employment determined in terms of subsection (1) may not be altered by the President during the incumbent's term of office without the incumbent's written consent or to the incumbent's detriment. 50

(4) A person appointed as Auditor-General—

- (a) must perform the functions of office full-time; and
- (b) may not perform any other remunerative work.