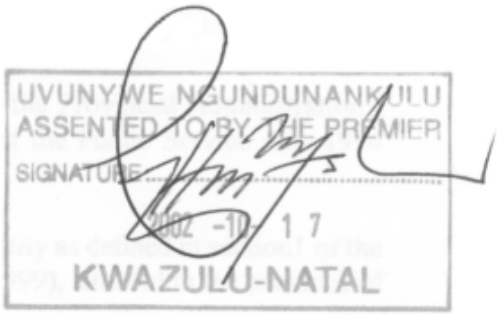
[English text signed by the Premier]

THE KWAZULU-NATAL DIRECT CHARGES ACT, 2002
(ACT NO. 4 OF 2002)

Assented to on 2002 ----------



ACT

To provide for the withdrawal of State moneys from the KwaZulu-Natal Provincial Revenue Fund, as a direct charge, in accordance with the provisions of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) and the Public Finance Management Act, 1999 (Act No. 1 of 1999), and for matters incidental thereto.

BE IT ENACTED by the Parliament of the Province of KwaZulu-Natal, as follows:

Definitions

1. In this Act, unless otherwise stated, the expressions defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999) bear the same meaning, and -

   "accounting officer" means a person mentioned in section 36 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

   "Constitution" means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

   "direct charge" means a withdrawal of funds from the Provincial Revenue Fund under this Act;

   "exclusion" means money excluded from deposits into the Provincial Revenue Fund as mentioned in section 22 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

   "MEC for finance" means the member of the Executive Council of the province of KwaZulu-Natal responsible for finance;

   "National Treasury" means the national Minister of Finance and the national department or departments responsible for financial and fiscal matters;

"Parliament" means the Provincial Legislature of KwaZulu-Natal;

"the PFMA" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"Province" means the province of KwaZulu-Natal contemplated in section 103 of the Constitution,

"provincial department" means a department within the Provincial Administration: KwaZulu-Natal as listed in Column 1 of Schedule 2 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"provincial public entity" means a provincial public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), situated in the province of KwaZulu-Natal;

"Provincial Revenue Fund" means the Provincial Revenue Fund established under section 226 of the Constitution; and

"provincial treasury" means the MEC for finance and the provincial department responsible for financial matters.

Purpose of this Act

2. The purpose of this Act is to provide for the withdrawal of funds from the Provincial Revenue Fund for the services of the Province during the financial year as direct charges against the Fund until the budget is passed.

Power to Withdraw from Provincial Revenue Fund

3. Only the provincial treasury may withdraw funds from the Provincial Revenue Fund as a direct charge against the Fund, as provided for in the Constitution or this Act.

Withdrawal from the Provincial Revenue Fund before budget is passed

4. (1) If an annual budget is not passed before the start of the financial year to which it relates, funds may be withdrawn from the Provincial Revenue Fund as a direct charge against the Fund until the budget is passed, in accordance with section 29 of the PFMA.

(2) The funds withdrawn under subsection (1) must only be used subject to the provision of section 29 of the PFMA.

Withdrawal from Provincial Revenue Fund and investment in National Revenue Fund

5. In accordance with section 24 of the PFMA, the provincial treasury may, as a direct charge against the Provincial Revenue Fund, withdraw money from the Fund -

   (a) to refund money incorrectly paid into, or not due to, the Provincial Revenue Fund; or

   (b) to deposit into or invest money in the National Revenue Fund.

Use of funds in emergency situations

6. Subject to the requirements of section 25 of the PFMA, the MEC for finance may, as a direct charge against the Provincial Revenue Fund, authorise the use of funds from the Provincial Revenue Fund to defray expenditure of an exceptional nature which is currently not provided for and which cannot, without serious prejudice to the public interest in the Province, be postponed to a future appropriation by Parliament.

Withdrawal of exclusion from Provincial Revenue Fund

7. (1) Subject to the provisions of section 23 (1) of the PFMA and subsection (2) below, from the date on which the withdrawal of an exclusion by the National Treasury takes effect until the end of the relevant financial year, the provincial treasury may transfer money from the Provincial Revenue Fund, as a direct charge against the Fund, to the provincial department or provincial public entity affected by the withdrawal of the exclusion.

   (2) The amount transferred under subsection (1) must not exceed the amount that would otherwise have been excluded from payment into the Fund.

   (3) As soon as the relevant information is brought to the attention of the MEC for finance, the MEC must inform Parliament of -

      (a) any exclusion granted to a provincial department or provincial public entity under section 22 of the PFMA, and

      (b) the withdrawal of any exclusion under section 23 of the PFMA

Utilisation of savings as virement between main divisions within vote

8. Unless the provincial treasury directs otherwise, and subject to the provisions of section 43 of the PFMA, an accounting officer for a department may, as a direct charge, utilise a saving in the amount appropriated under a main division within a vote towards the defrayment of excess expenditure under another main division within the same vote.

Other direct charges

9. Any other direct charges provided for in any other legislation, which are not inconsistent with the PFMA and this Act, will apply *mutatis mutandis* as if incorporated into this Act.

Compliance with the PFMA

10. (1) Subject to subsection (2), Parliament is bound by, and must comply with, the provisions of the PFMA.

    (2) For the purposes of accounting obligations and responsibilities, Parliament is deemed to be a constitutional institution under the PFMA.

Repeal of Laws

11. The KwaZulu-Natal Exchequer Act, 1994 (KZN Act No. 1 of 1994), is repealed.

Short title and commencement

12. This Act is called the KwaZulu-Natal Direct Charges Act, 2002.