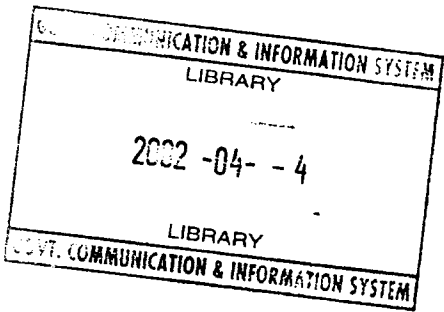


PRIVATE SECURITY INDUSTRY
LEVIES BILL

(As introduced in the National Assembly as a Money Bill)
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)



[B 11—2002]

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BILL

To provide for the imposition of levies by the Private Security Industry Regulatory Authority; and for matters incidental thereto.

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

Definitions

1. In this Act, unless the context indicates otherwise a word or expression defined in the Private Security Industry Regulation Act has the meaning assigned to it in that Act and Regulatory 2(1) of the Private Security Industry Regulation Act— 5

“levy” means an amount imposed in terms of section 2(1);

“penalty” means a penalty payable in terms of section 5(5);

“Private Security Industry Regulation Act” means the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001); 10

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

Imposition of levies

2. (1) The Council may, by notice in the *Gazette* and subject to subsections (2) and (5) and section 4— 15

- (a) impose levies on security service providers for the purposes contemplated in section 3;
- (b) vary the levies;
- (c) determine the amount of interest payable in terms of section 5; and
- (d) determine the amount of levies for different categories or classes of security service providers by having regard to— 20
 - (i) the training level, position, functions or other classification;
 - (ii) the number of security officers employed by a security business or made available by it to render a security service during a calendar month; and
 - (iii) the monthly gross income of the security service provider. 25

(2) The Council must, before imposing or varying levies or making a determination in terms of subsection (1)—

- (a) inform security service providers of such intention by publishing a notice in the *Gazette* containing—
 - (i) the details of the proposed imposition, variation or determination; 30
 - (ii) the reason for such imposition, variation or determination;
 - (iii) the proposed date of commencement of the imposition, variation or determination; and
 - (iv) an invitation for representations to be made to the Council within four weeks from the date of the notice; 35
- (b) consider any representations made to it in terms of paragraph (a)(iv);
- (c) in writing, notify the Minister of the proposed imposition, variation or determination and the period for which such imposition, variation or determination is intended to operate;
- (d) provide the Minister with proof of consultation, if any, with the security industry with regard to the imposition, variation or determination; and 40

- (e) provide the Minister with such further information in connection with the imposition, variation or determination as the Minister may request.
- (3) The Minister must—
 - (a) with the concurrence of the Minister of Finance, within a period of 60 days after receiving a notice referred to in subsection (2)(c), give the Council notice approving or rejecting the proposed imposition, variation or determination; and 5
 - (b) give reasons in the event of rejecting the imposition, variation or determination.
- (4) The Minister may, with the concurrence of the Minister of Finance, in the notice referred to in subsection (3)(b) recommend an alternative levy or determination. 10
- (5) The Council may impose levies, vary levies, or make a determination in terms of subsection (1), only after approval by the Minister.
- (6) The Council must, by notice in the *Gazette*, publish an imposition, variation or determination in terms of subsection (1) at least 30 days before its commencement. 15
- (7) The Council must annually review the levies and the interest determination referred to in subsection (1).

Use and management of levies

- 3. (1) Levies, interest and penalties form part of the funds of the Authority.
- (2) The Authority must— 20
 - (a) manage and use the levies, interest and penalties according to the Private Security Industry Regulation Act;
 - (b) deposit the levies, interest and penalties collected into a bank account approved by the National Treasury in terms of section 7(2) of the Public Finance Management Act; and 25
 - (c) keep proper records of all levies, interest and penalties collected and disbursed.
- (3) The Council must submit to the Minister for approval with the concurrence of the Minister of Finance—
 - (a) an annual report according to the Private Security Industry Regulation Act; and 30
 - (b) at least six months before the start of the financial year of the Department of Safety and Security, or within another period agreed between the Minister and the Council—
 - (i) a budget of estimated revenue and expenditure for the next financial year of the Authority in terms of section 53 of the Public Finance Management Act; and 35
 - (ii) a business plan in the prescribed format covering the affairs of the Authority for the Authority's following three financial years in terms of section 54(1) of the Public Finance Management Act. 40

Basis for determination and payment of levies

- 4. (1) A person registered as a security service provider in terms of the Private Security Industry Regulation Act must, subject to this Act, within seven days after the end of every calendar month, pay to the Authority the applicable monthly levy contemplated in section 2(1). 45
- (2) Every person who is the employer of a security officer must—
 - (a) in writing, notify the Authority of the names, identity numbers and such other particulars as may be required by the Authority of all security officers employed by that person, within seven days after the commencement of each such employment; 50
 - (b) deduct the levies from the remuneration, reward or fee of each such security officer;
 - (c) within seven days after the end of each calendar month, pay to the Authority the levy in respect of each such security officer, whether a deduction referred to in paragraph (b) has been made or not; and 55
 - (d) in writing, notify the Authority of the name, identity number and such other particulars of any security officer whose employment has been terminated as may be required by the Authority, within seven days of the termination of the employment of such security officer.

(3) The Council may determine reasonable and equitable criteria in terms of which the obligations of a security service provider in terms of this section may be postponed and conditions of such postponement.

(4) A registered security officer who was not employed or used as such for at least one day in a particular calendar month, is not liable to pay any levy in respect of that calendar month. 5

(5) (a) If a security officer is, in terms of the Private Security Industry Regulation Act, employed by more than one person in a particular calendar month, such employers are liable jointly and severally in respect of deducting and paying over of the levies referred to in subsection (2). 10

(b) The Authority may, by notice in writing served on one of the employers referred to in paragraph (a), direct that such employer is solely responsible to deduct and pay over the levies referred to in subsection (2), for such a period as may be determined in the notice.

Non-payment of levies 15

5. (1) The Council—

- (a) must suspend registration of a security business if it fails to comply with an obligation under section 4(1), 4(2)(b) or 4(2)(c); and
- (b) may suspend registration of a security business if it fails to comply with any other provision of this Act. 20

(2) If registration of a security business is suspended, such security business—

- (a) may not render any security service, except with the prior written permission of the Authority; and
- (b) is bound by the obligations of a registered security service provider as provided for in this Act and the Private Security Industry Regulation Act. 25

(3) Registration of a security business lapses if—

- (a) the amount referred to in section 4(1) is not paid to the Authority;
- (b) a deduction referred to in section 4(2)(b) is not made; or
- (c) the amount so deducted is not paid over to the Authority, 30

within three months of the date of suspension of the registration of the security business concerned, unless the Authority determines otherwise.

(4) The Authority may withdraw the registration of a security officer in respect of whom it has not received an amount referred to in section 4(2)(b) or 4(2)(c) if—

- (a) at least three months have elapsed after the said amount was due and payable to the Authority; 35
- (b) notice has been served on the security officer to that effect and that he or she may, in writing and within a specified period, give reasons why his or her registration should not be withdrawn; and
- (c) after consideration of any such reasons, the Authority is satisfied that it is reasonable in the circumstances to withdraw the registration. 40

(5) A person who has failed to make a payment referred to in section 4(1) or 4(2)(c) must, within the period determined by the Council and stipulated in a written notice, pay to the Authority—

- (a) the levy concerned;
- (b) interest as determined in terms of subsection (6), calculated upon the unpaid amount of the levy from the date that the levy becomes due and payable until the date that it is paid; and 45
- (c) a penalty of ten percent on the levy and the interest accrued thereon when payment is made.

(6) The uniform rate of interest contemplated in section 80(1)(b) of the Public Finance Management Act, 1999, must form the basis for the determination of the interest payable to the Authority. 50

(7) If the Authority is satisfied that the failure to comply with an obligation in terms of this section was not as a result of an intention to postpone payment or to evade such obligation, it may remit the whole or part of the interest and penalty referred to in subsection (5). 55

(8) Any amount due to the Authority in terms of this Act constitutes a civil debt that may be recovered by the Authority in a competent court.

(9) A certificate signed by the director or the deputy director of the Authority responsible for finance and administration, and submitted to court in any proceedings 60

referred to in subsection (8), constitutes provisional proof of the amount of any indebtedness in terms of this section.

Duration of levy

6. (1) Any levy imposed in terms of section 2(1)(a) lapses five years after the date of its imposition. 5
- (2) (a) The Minister may, with the concurrence of the Minister of Finance and at the request of the Council—
- (i) give written notice to the Council approving or rejecting the re-imposition of a levy; and
 - (ii) in the event of rejecting the re-imposition, must give reasons for such rejection. 10
- (b) Such a notice may be given within a period of not less than three months and not more than nine months before the day on which the imposed levy lapses.

Assessment of performance of Authority

7. (1) For the purposes of any approval by the Minister in terms of this Act, the Minister may cause the performance of the Authority to be assessed, especially with regard to— 15
- (a) the efficiency, economy and effectiveness of management of the financial resources of the Authority;
 - (b) the extent to which the Authority has achieved its objects in terms of section 3 of the Private Security Industry Regulation Act; and 20
 - (c) any other matter agreed upon between the Minister and the Minister of Finance with regard to the financial or operational activities of the Authority.
- (2) Any such assessment must be considered by the Minister before giving any approval in terms of this Act. 25
- (3) If the Minister, after consideration of the assessment, is not satisfied with the performance of the Authority, the Minister may take any of the steps provided for in section 11 of the Private Security Industry Regulation Act.
- (4) The Minister must, at least once every five years, cause an assessment of the performance of the Authority to be made for consideration by the Minister and the Minister of Finance. 30

Act bind state

8. This Act binds the state.

Repeal of laws

9. The provisions of the Security Officers Act, 1987 (Act No. 92 of 1987), including the regulations, relating to the deduction and payment of annual amounts, the funding of the Security Officers Interim Board and the imposition of criminal and other sanctions relating thereto, are hereby repealed with effect from the day immediately before the date on which the first imposition of levies contemplated in section 2 commences. 35

Short title and commencement

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10. This Act is called the Private Security Industry Levies Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE PRIVATE SECURITY INDUSTRY LEVIES BILL, 2002

1. INTRODUCTION

1.1 The Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001) provides, amongst others, for the regulation of the private security industry by a Private Security Industry Regulatory Authority that will act through a Council comprising of persons who must not have any interests in the private security industry. The costs of regulating the private security industry will be borne by the members of the private security industry registered with the Authority through the imposition of levies upon them by the Authority.

1.2 Section 77 of the Constitution provides that a Bill that appropriates money or imposes taxes, levies or duties is a money Bill and a money Bill may not deal with any other matter except a subordinate matter incidental to the appropriation of money or the imposition of taxes, levies or duties. In terms of section 73(2) of the Constitution, only a Cabinet member responsible for national financial matters may introduce a money Bill in the National Assembly.

2. SUBSTANCE AND ANALYSIS OF BILL

2.1 Clause 1 contains the definitions which must be read in the context of the Private Security Industry Regulation Act and any word or expression to which a meaning has been assigned in the principal Act will bear the meaning so assigned. The section has additional definitions that are not catered for in the principal Act.

2.2 Clause 2 empowers the Council of the Private Security Industry Regulatory Authority to—

- * impose levies on private security service providers and private security officers for the purpose of meeting the general administrative and other costs of the Authority and the functions of the Authority;
- * vary the levies;
- * determine interest payable; and
- * determine differential levies payable for different categories or classes of security service providers.

The purpose for the imposition of levies is to enable the Authority to meet the general administrative and other costs of the Authority and the functions performed by the Authority.

This clause of the Bill further provides for procedural matters relating to the imposition, variation or determination of levies. The Minister for Safety and Security is required in specified instances to act with the concurrence of the Minister of Finance on matters relating to the imposition, variation or determination of levies.

2.3 Clause 3 of the Bill provides for the Authority to manage and use the levies for the Authority, to deposit the levies and interest collected into an approved bank account and to keep proper record of all levies and interest collected and disbursed. The Council is required to submit annual reports to the Minister for Safety and Security, to submit to such Minister for his or her approval a budget of estimated revenue and expenditure for the next financial year of the Authority and a corporate plan of the affairs of the Authority for its following three financial years. These provisions are necessary to ensure the accountability of the Authority to the Minister for Safety and Security and to the Minister of Finance.

2.4 Clause 4 of the Bill places certain obligations on registered security providers to deduct and pay to the Authority the applicable monthly levies; to notify the Authority of certain details of employees, in addition to imposing certain penalties as a result of non-payment of levies. These provisions are necessary to place an obligation on employers or security service providers to deduct levies from the remuneration, reward or fee of security officers and to pay such levies deducted to the Authority. These obligations will contribute to the financial viability of the Authority.

2.5 Clause 5 of the Bill deals with the consequences that security businesses will face in situations where such businesses fail to comply with an obligation provided for in the Bill. Provision is made for suspension of registration, lapsing of registration, withdrawal of registration and liability for making deductions of levies and the paying over of such levies. These consequences will assist the Authority in the proper and effective

regulation of the industry and will also compel security businesses to comply with the obligations imposed upon them in terms of the Bill.

2.6 Clause 6 of the Bill provides for a levy to lapse after a period of five years after the day it was introduced and for matters related thereto. The Minister for Safety and Security is empowered to approve or disapprove a re-imposition of the levy and is required to provide reasons for disapproving a re-imposition of a levy, and in so doing he or she must act with the concurrence of the Minister of Finance.

2.7 Clause 7 of the Bill empowers the Minister for Safety and Security to commission the assessment of the performance of the Authority for consideration by such Minister and the Minister of Finance.

3. DEPARTMENTS CONSULTED

The National Treasury was consulted in the drafting of the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

There are no financial implications for the State as the Bill provides for the Authority to introduce a levy to be paid by the members of the private security industry. The levies will be utilised to meet the general administrative and other costs relating to the regulation of the private security industry.

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Finance are of the opinion that the Bill must, in terms of section 73(2) of the Constitution, be introduced in the National Assembly by the Cabinet member responsible for financial matters. In terms of section 77(2) of the Constitution, a money Bill must be considered in accordance with the procedure established by section 75 of the Constitution.