

REPUBLIC OF SOUTH AFRICA

MUNICIPAL FISCAL POWERS AND FUNCTIONS BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 29775 of 13 April 2007)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 9—2007]

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

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

To regulate the exercise by municipalities of their power to impose surcharges on fees for services provided under section 229(1)(a) of the Constitution; to provide for the authorisation of taxes, levies and duties that municipalities may impose under section 229(1)(b) of the Constitution; and to provide for matters connected therewith.

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

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CHAPTER 1

INTERPRETATION AND OBJECTS OF ACT

Definitions and interpretation 10

1. (1) In this Act, unless the context indicates otherwise—
- “**category of municipality**” means a category A, B or C municipality referred to in section 155(1) of the Constitution;
- “**collecting agent**” means the collecting agent determined by the Minister in terms of section 6(b)(ii); 15
- “**Commission**” means the Financial and Fiscal Commission established by section 220 of the Constitution;
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**Minister**” means the Minister of Finance;
- “**municipal base tariff**” means the fees necessary to cover the actual cost 20 associated with rendering a municipal service, and includes—
- (a) bulk purchasing costs in respect of water and electricity reticulation services, and other municipal services;
- (b) overhead, operation and maintenance costs;
- (c) capital costs; 25
- (d) a reasonable rate of return, if authorised by a regulator of or the Minister responsible for that municipal service;
- (e) administration and regulatory costs;
- “**municipal financial year**” means the financial year of a municipality commencing on 1 July and ending on 30 June; 30
- “**municipal service**” means any of the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 to the Constitution;
- “**municipal surcharge**” means a charge in excess of the municipal base tariff that a municipality may impose on fees for a municipal service provided by or on behalf of a municipality, in terms of section 229(1)(a) of the Constitution; 35
- “**municipal tax**” means a tax, levy or duty that a municipality may impose in terms of section 229(1)(b) of the Constitution;
- “**national economic policy**” includes the tax policy for the Republic as determined by the national government;
- “**organised local government**” means an organisation recognised in terms of 40 section 2(1) of the Organised Local Government Act, 1997 (Act No. 52 of 1997), to represent local government nationally or provincially;
- “**prescribe**” means prescribe by regulation;
- “**regulation**” means a regulation made under section 10; and
- “**this Act**” includes any regulation or determination made or instruction given 45 under this Act.
- (2) If any conflict relating to the matters dealt with in this Act arises between this Act and any other legislation in force when this Act takes effect, this Act prevails.

Objects of Act

2. The objects of this Act are to— 50
- (a) promote predictability, certainty and transparency in respect of municipal fiscal powers and functions;

- (b) ensure that municipal fiscal powers and functions are exercised in a manner that will not materially and unreasonably prejudice national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour;
- (c) effectively oversee the exercise of municipal fiscal powers and functions; and 5
- (d) provide for an appropriate division of fiscal powers and functions where two municipalities have the same fiscal powers and functions with regard to the same area in accordance with section 229(3) of the Constitution, by—
- (i) regulating the exercise by municipalities of their power to impose municipal surcharges on fees for services under section 229(1)(a) of the Constitution; 10
- (ii) authorising the municipal taxes that municipalities may impose under section 229(1)(b) of the Constitution; and
- (iii) regulating the exercise by municipalities of their power to impose municipal taxes, if authorised. 15

Application of Act

3. This Act applies to municipal surcharges and municipal taxes referred to in section 229 of the Constitution, other than rates on property regulated in terms of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004).

CHAPTER 2

20

MUNICIPAL TAX

Authorisation of municipal tax

4. (1) The Minister may of his or her own accord or on application in terms of section 5 by a municipality, group of municipalities or organised local government authorise a municipal tax. 25
- (2) Prior to authorising a municipal tax the Minister—
- (a) must consult—
 - (i) the Minister responsible for local government and organised local government; and
 - (ii) the Commission; and 30
 - (b) may consult any other organ of state or interested persons.
- (3) The Minister authorises a municipal tax by prescribing the regulations contemplated in section 6.

Application for authorisation

5. (1) A municipality, group of municipalities or organised local government must submit an application to the Minister, which application must— 35
- (a) set out the reasons for the imposition of the proposed municipal tax;
 - (b) the purposes for which revenue derived from the collection of the municipal tax will be utilised;
 - (c) give particulars on the proposed municipal tax's compliance with section 229(2)(a) of the Constitution; 40
 - (d) give particulars on the proposed municipal tax's compliance with the prohibition contained in section 229(1)(b) of the Constitution;
 - (e) identify and, where appropriate, describe—
 - (i) the tax base; 45
 - (ii) the desired tax rate;
 - (iii) the persons liable for the tax; and
 - (iv) any tax relief measures or exemptions;
 - (f) specify—
 - (i) the tax-collecting authority; 50
 - (ii) the persons responsible for remitting the tax;
 - (iii) the methods and likely costs of enforcing compliance with that tax;
 - (iv) the compliance burden on taxpayers; and
 - (v) procedures for taxpayer assistance;

- (g) give particulars of, and describe the estimation methods and assumptions used to determine—
 - (i) the amount of revenue to be collected on an annual basis over the three municipal financial years following the introduction of the municipal tax; 5
 - (ii) the economic impact on individuals and businesses; and
 - (iii) the impact on economic development;
 - (h) give particulars of any consultations conducted, including consultations with, where applicable, a provincial government, organised local government and municipalities, and the outcomes of such consultations; 10
 - (i) give particulars of any consultations with the South African Revenue Service and any other collecting agent contemplated in section 7, regarding the administration of the proposed municipal tax; and
 - (j) include such other information as may be prescribed.
- (2) If the Minister intends authorising the municipal tax in respect of which an application was submitted, the Minister must— 15
- (a) notify the municipality, group of municipalities or organised local government and the Minister responsible for local government in writing within six months of submission of the application of his or her intention; and
 - (b) by not later than 12 months after that notification, prescribe the regulations 20 contemplated in section 6.
- (3) In the event that the Minister does not approve the municipal tax in respect of which an application was submitted, the Minister must, within six months of submission of the application, notify the municipality, group of municipalities or organised local government and the Minister responsible for local government in writing of his or her 25 decision and the reasons therefor.

Regulations regarding imposition and administration of municipal tax

6. The regulations—

- (a) must regulate the powers of a municipality, group of municipalities or a kind of municipality, which may be defined either in relation to the capacity of a 30 municipality, a category, type or budgetary size of municipality or the powers and functions exercised by a municipality to impose the municipal tax;
- (b) must determine—
 - (i) the date from which the municipal tax may be imposed, which date must coincide with the start of a municipal financial year; and 35
 - (ii) the collecting agent for such municipal tax, if it is not the municipality or municipalities authorised to impose the tax;
- (c) must determine the tax base on which such municipal tax may be levied and any exclusion from the tax base, if any, and—
 - (i) where the tax is a specific purpose tax or a tax levied on the same tax base 40 as that of national taxes, the rate expressed as a percentage or Rand value at which a municipality may impose that tax; or
 - (ii) where the tax is not a specific purpose tax or a tax levied on the same tax base as that of national taxes—
 - (aa) the rate expressed as a ratio, a percentage of the municipal tax base 45 or a Rand value at which a municipality may impose that tax; or
 - (bb) the bands or ranges within which that municipal tax may be imposed; and
 - (iii) the basis upon and the intervals at which the rates referred to in paragraph (i) or (ii) may be increased; 50
- (d) may—
 - (i) limit the period during which the municipal tax may be imposed;
 - (ii) in respect of a specific purpose tax, limit the purpose for which revenue derived from the collection of the municipal tax may be utilised;
 - (iii) specify that a percentage of the revenue derived from the collection of 55 the specific purpose tax must be utilised for a specific purpose; and

- (e) may include any other matter necessary for the proper imposition and administration of the municipal tax.

Collection of municipal tax

7. A municipality authorised to impose a municipal tax is the collecting agent for that municipal tax, unless the Minister has, in the regulations contemplated in section 6, designated another person for that purpose. 5

CHAPTER 3

MUNICIPAL SURCHARGES

Norms and standards

8. (1) The Minister may prescribe compulsory national norms and standards for imposing municipal surcharges, which may include, amongst others, maximum municipal surcharges that may be imposed by municipalities. 10

(2) The norms and standards contemplated in subsection (1) may—

- (a) in respect of maximum municipal surcharges—
 - (i) express the maximum municipal surcharge that may be imposed as a ratio, a percentage of the municipal base tariff or a Rand value; 15
 - (ii) provide bands or ranges within which municipal surcharges may be imposed;
- (b) differentiate between different—
 - (i) kinds of municipalities, which may be defined in relation to the capacity of a municipality, a category, type or budgetary size of municipality; 20
 - (ii) types of municipal services;
 - (iii) levels of municipal services;
 - (iv) categories of users, debtors and customers;
 - (v) consumption levels; and 25
 - (vi) geographical areas;
- (c) determine the basis upon and the intervals at which municipal surcharges may be increased; and
- (d) determine matters that must be assessed and considered by municipalities in imposing municipal surcharges on fees. 30

Obligations of municipality in respect of municipal surcharges

9. (1) (a) A municipality must, when imposing a surcharge on fees for services provided by it or on its behalf, comply with any norms and standards contemplated in section 8.

(b) The Minister may of his or her own accord or on application in the manner referred to in section 5 by a municipality, or a group of municipalities or organised local government, by notice in the *Gazette* exempt a municipality from complying with any norms and standards contemplated in section 8 for a period and on the conditions determined in the notice. 35

(c) An exemption under paragraph (b) may— 40

- (i) apply to municipalities generally; or
- (ii) be limited in its application to a particular municipality or kind of municipality, which may be defined in relation to the capacity of a municipality or the category, type or budgetary size of municipality.

(2) Section 75A(2), (3) and (4) of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), relating to the manner in which fees, charges or tariffs are levied and how a resolution in that respect must be made known, applies with the changes required by the context to a municipal surcharge. 45

(3) A municipality must annually as part of its budget preparation process review any municipal surcharges. 50

CHAPTER 4

GENERAL

Regulations

- 10.** (1) The Minister may, by notice in the *Gazette*, make regulations regarding—
- (a) any matter that must or may be prescribed in terms of this Act; 5
 - (b) an appropriate division of fiscal powers and functions where two municipalities have the same fiscal powers and functions with regard to the same area in accordance with section 229(3) of the Constitution; and
 - (c) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act. 10
- (2) The Minister must regularly, but at least once every five years, review the regulations made under this Act and any municipal tax authorised by those regulations.
- (3) Any amendment to or repeal of the regulations made under this Act takes effect at the commencement of the municipal financial year following the municipal financial year in which the amendment or repeal was affected. 15
- (4) Before any regulations are made under this section, the Minister must—
- (a) consult—
 - (i) the Minister responsible for local government;
 - (ii) the relevant cabinet members on any matter affecting their executive authority; 20
 - (iii) the relevant members of the Executive Council of a province on any matter affecting their executive authority;
 - (iv) the Commission; and
 - (v) organised local government; 25
 - (b) publish the draft regulations in the *Gazette* for public comment; and
 - (c) submit the draft regulations to Parliament for parliamentary scrutiny at least one month before their promulgation.

Amendments to this Act

- 11.** Draft national legislation directly or indirectly amending this Act, or providing for the enactment of subordinate legislation that may conflict with this Act, may be introduced in Parliament—
- (a) by the Minister only; or
 - (b) only after the Minister has been consulted on the contents of the draft legislation. 35

Transitional provisions

- 12.** (1) A municipality must, within two years of the date on which this Act commences, apply to the Minister in accordance with this Act for the authorisation of a tax, other than a regional establishment levy or regional services levy imposed under the Regional Services Council Act, 1985 (Act No. 109 of 1985), or the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990), imposed by that municipality prior to the commencement of this Act. 40
- (2) A tax referred to in subsection (1) lapses—
- (a) two years after the date on which this Act commences, if a municipality fails to apply for authorisation in accordance with subsection (1); or 45
 - (b) six months after the Minister has notified the municipality that an application contemplated in subsection (1) is not approved.

Amendment of legislation and savings

- 13.** The legislation referred to in the second column of the Schedule is hereby amended or repealed to the extent indicated in the third column of the Schedule. 50

Short title and commencement

- 14.** This Act is called the Municipal Fiscal Powers and Functions Act, 2007.

SCHEDULE

(Section 13)

AMENDMENT OF LEGISLATION

No. and year of Act	Short title of Act	Extent of repeal or amendment
Act No. 32 of 2000	Local Government: Municipal Systems Act, 2000	1. The repeal of paragraph (d) of subsection (1) of section 86A.
Act No. 56 of 2003	Local Government: Municipal Finance Management Act, 2003	1. The repeal of subsection (2) of section 20. 2. The repeal of subsection (6) of section 28. 3. The addition of the following subsection to section 43: <u>“(4) This section does not apply to a municipal tax authorised in terms of the Municipal Fiscal Powers and Functions Act, 2007.”.</u> 4. The substitution for paragraph (c) of subsection (1) of section 168 of the following paragraph: “(c) a framework for regulating the exercise of municipal [fiscal and] tariff-fixing powers;”.

MEMORANDUM ON THE OBJECTS OF THE MUNICIPAL FISCAL POWERS AND FUNCTIONS BILL, 2007

1. BACKGROUND OF THE BILL

The Constitution

- 1.1 Section 229(1)(a) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), empowers municipalities to impose municipal surcharges on fees for services provided by them or on their behalf.
- 1.2 Municipalities may in terms of section 229(1)(b) also, if authorised by national legislation, impose other taxes, levies and duties (“taxes”) appropriate to local government or to the category of local government into which that municipality falls, but excluding an income tax, a value-added tax, general sales tax and customs duties.
- 1.3 Section 229(2) subjects these powers to regulation by national legislation and policy.
- 1.4 The Bill meets constitutional requirements by defining the manner in which the national government, through the Minister of Finance, will exercise its policy oversight role, regulatory role and authorisation role in respect of municipal surcharges and taxes, other than property rates regulated under the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004).
- 1.5 The Bill does not list or identify specific taxes which municipalities may enact. Responsibility for initiating a municipal tax proposal rests with municipalities and organised local government and they may propose any tax not prohibited by the Constitution. The Minister of Finance is also empowered to authorise, of his or her own accord, a municipal tax. The Bill regulates the process by which municipal taxes are authorised and imposed.
- 1.6 The Bill does not cover municipal user charges which are regulated under the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003).
- 1.7 Existing taxes imposed under national legislation prior to the date of the Act in the instance of Regional Services Councils (RSC) and Joint Service Board (JSB) levies, lapsed on 30 June 2006, and in other instances will be subject to approval within two years after the commencement of the Bill.

Regional Services Councils (RSC) and Joint Service Board (JSB) levies

- 1.1 The Minister, in his 2005 Budget Speech, announced the phasing out of the RSC and JSB levies provided for in the Regional Services Council Act, 1985 (Act No. 109 of 1985), and the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990), with effect from 1 July 2006. These levies do not meet generally accepted principles of sound taxation (e.g. equity, efficiency, certainty, simplicity, ease of administration). They are a holdover from the previous local government system and are highly imperfect local revenue instruments for the achievement of the goals of economic and administrative efficiency and local autonomy. These levies are inefficient (both economically and administratively), inequitable and a poorly administered tax instrument. Both the Margo and Katz Commissions expressed concerns about the economic efficiency and administrative feasibility of the RSC levies.
- 1.2 The repeal of section 93(6) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), by section 59(1) of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 9 of 2006), will remove district and metropolitan municipalities’ authority to collect these

levies, effectively remove these levies as a local tax instrument and further the policy objective of providing a fair and equitable tax system in South Africa.

- 1.3 Despite the deficiencies, RSC and JSB levies are currently an important source of revenue for district and metropolitan municipalities, making up seven per cent or R6,6 billion of total local government revenue in the 2005/06 municipal fiscal year. Whereas metropolitan municipalities collect two-thirds of these levies, it accounts for a small but significant percentage (eight per cent) of their overall income. Conversely, district municipalities collect only a third of these levies, but it accounts for a much larger share (31 per cent) of overall district municipality income. Levy income per municipality for the 2005/06 financial year varied between R247 million and R1 575 million (average R737 million) for metropolitan municipalities and between R3 million and R165 million (average R45 million) for district municipalities. Revenue from RSC and JSB levies of approximately R7 billion was projected for the 2006/07 municipal financial year.
- 1.4 For district and metropolitan municipalities to meet their expenditure obligations, especially in terms of poverty alleviation and social and economic development, it is important to maintain existing levels of revenue streams. The 2005 Medium Term Budget Policy Statement indicated that national government would compensate municipalities for lost revenue within the national budget framework, and that options for alternative tax or revenue sharing arrangements were under consideration. To ensure a smooth transition from the old to the new system, allocations in the short- to medium-term will be based on historic RSC and JSB levy income collected. Allocations to replace the levy income have been included as part of the local government equitable share for the 2006 and 2007 Budgets. Any replacement tax or revenue sharing arrangements will only be considered over the medium-term. An announcement on permanent replacement options is not envisaged before the 2008 Budget.

2. OBJECTS OF BILL

2.1 The Bill seeks to—

- (a) promote predictability and certainty in respect of municipal fiscal powers and functions;
- (b) ensure that municipal fiscal powers and functions are exercised in a manner that will not materially and unreasonably prejudice national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour; and
- (c) effectively oversee the exercise of municipal fiscal powers and functions, by—
 - (i) regulating the exercise by municipalities of their power to impose municipal surcharges on fees for services under section 229(1)(a) of the Constitution; and
 - (ii) authorising the taxes, levies and duties that municipalities may impose under section 229(1)(b) of the Constitution.

3. ORGANISATIONS AND INSTITUTIONS CONSULTED

The following institutions were consulted on the Bill:

- 3.1 The Financial and Fiscal Commission;
- 3.2 The South African Local Government Association;
- 3.3 The Department of Provincial and Local Government; and
- 3.4 Municipalities.

4. FINANCIAL IMPLICATIONS FOR STATE

- 4.1 The Bill will not have financial implications for the national or provincial government.
- 4.2 The implementation of municipal surcharges by municipalities will not have any additional financial implications for municipalities as the municipal surcharges will be collected through the same processes, procedures and systems that must be in place to collect fees for the services on which surcharges will be imposed.
- 4.3 There may be financial implications for those municipalities where existing surcharges raised are excessive and will need to be reduced on implementation of the norms and standards for surcharges.
- 4.4 Limited costs is associated with making an application for authorisation of municipal tax and start-up costs may be associated with the initial implementation of a municipal tax.

5. CONSTITUTIONAL IMPLICATIONS

The Bill gives effect to sections 229(1)(b) and 229(2) of the Constitution.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 6.2 The National Treasury has consulted organised local government and the Financial and Fiscal Commission and has considered the recommendations of the Commission, as required by section 229(5) of the Constitution.
- 6.3 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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