REPUBLIC OF SOUTH AFRICA

MUNICIPAL FISCAL POWERS AND FUNCTIONS AMENDMENT BILL

(As amended by the Standing Committee on Finance (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 21D—2022]

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GENERAL EXPLANATORY NOTE:

[ ]	Words in bold type in square brackets indicate omissions from existing enactments.
_____	Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Municipal Fiscal Powers and Functions Act, 2007, so as to insert certain definitions; to regulate the power of municipalities to levy development charges; to set out the permissible uses of income from development charges; to provide for the basis of calculation of development charges; to provide for municipal development charges policies; to provide for community participation and making of by-laws in order to give effect to policy on development charges; to provide for engineering services agreements; to provide for the installation of external engineering services by applicants instead of payment of development charges; to provide for the consequences of non-provision of infrastructure by a municipality; to provide for rebate and exemption on the payment of development charges; to provide for dispute resolution, delegations and financial misconduct and transitional provisions relating to development charges; to empower the Minister to make regulations for the effective implementation of matters relating to development charges; to amend the Spatial Planning and Land Use Management Act, 2013; and to provide for matters connected therewith.

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

Substitution of section 1 of Act 12 of 2007

1. The following section is hereby substituted for section 1 of the Municipal Fiscal Powers and Functions Act, 2007 (Act No.12 of 2007) (hereinafter referred to as the principal Act):

"**Definitions and interpretation**

1. (1) In this Act, unless the context otherwise indicates—

'applicant' means an applicant whose land development application is approved, in whole or in part, by the person or body authorised to do so in terms of the Spatial Planning and Land Use Management Act;

'bulk engineering service' means bulk engineering service as defined in section 1 of the Spatial Planning and Land Use Management Act;

'capacity' means the maximum demand for an engineering service that the associated capital infrastructure assets can meet;

'capital infrastructure asset' means land, property, building or any other immovable asset, including plant and equipment that accede thereto, which is required for provision of an engineering service, parks and open spaces or a municipal service;

'Constitution' means the Constitution of the Republic of South Africa, 1996;

'development charge' means a charge levied by a municipality in terms of section 9A(1)*(a)*, and contemplated in section 49 of the Spatial Planning and Land Use Management Act, which must contribute towards—

(a) the cost of capital infrastructure assets required to meet increased demand for existing and planned external engineering services; or

(b) the cost referred to in paragraph *(a)* and the cost of land for parks and open spaces if the land development application provides for the use of land for residential purposes; or

(c) the costs referred in paragraphs *(a)* and *(b)* and, with the approval of the Minister, the cost of municipal services other than engineering services;

'engineering service' means engineering service as defined in section 1 of the Spatial Planning and Land Use Management Act;

'engineering services agreement' means a written agreement concluded between a municipality and an applicant on which a land development application has been brought in terms of section 45 of the Spatial Planning and Land Use Management Act, recording their detailed and specific respective rights and obligations regarding the provision and installation of external engineering services and internal engineering services required for an approved land development and matters ancillary thereto;

'engineering service zone' means, for each engineering service, the area within a municipal boundary which is served by a geographically or technically distinct network of capital infrastructure assets, as determined in accordance with section 9B(2)*(e)*(i);

'external engineering service' means an external engineering service as defined in section 1 of the Spatial Planning and Land Use Management Act, and includes bulk engineering service and link engineering service;

'internal engineering service' means an internal engineering service as defined in section 1 of the Spatial Planning and Land Use Management Act;

'land development' means land development as defined in section 1 of the Spatial Planning and Land Use Management Act;

'land development application' means an application for approval of land development as contemplated in section 33, read with section 45, of the Spatial Planning and Land Use Management Act;

'land use' means land use as defined in section 1 of the Spatial Planning and Land Use Management Act;

'link engineering service' means a link engineering service as defined in section 1 of the Spatial Planning and Land Use Management Act;

'Minister' means the Minister of Finance;

'municipal base tariff' means the fees necessary to cover the actual cost associated with rendering a municipal service, and includes, but is not limited to—

(a) bulk purchasing costs in respect of water and electricity reticulation services, and other municipal services;

(b) overheads, operation and maintenance costs;

(c) capital costs; and

(d) a reasonable rate of return, if authorised by a regulator of, or the Minister responsible for, that municipal service;

'municipal council' means a municipal council contemplated in section 157 of the Constitution;

'Municipal Finance Management Act' means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

'municipality'—

(a) when referred to as a corporate body, means a municipality as described in section 2 of the Municipal Systems Act; or

(b) when referred to as a geographical area, means the area falling within a municipal boundary in terms of section 21 of the Local

Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

'Municipal Planning Tribunal' means a Municipal Planning Tribunal as defined in section 1 of the Spatial Planning and Land Use Management Act, and includes a municipal official authorised to determine land use and land development applications in terms of section 35(2) of the Spatial Planning and Land Use Management Act;

'municipal service' means—

(a) any local government matter listed in Part B of Schedule 4 or Part B of Schedule 5 to the Constitution; or

(b) any function assigned to a municipality in accordance with section 9 or 10 of the Municipal Systems Act;

'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;

'Municipal Systems Act' means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

'municipal tax' means a tax, levy or duty that a municipality may impose in terms of section 229(1)*(b)* of the Constitution;

'prescribe' means prescribe by regulation in terms of section 10;

'rebate' means a reduction granted by a municipality in terms of section 9E on the amount of development charge payable for a category of applicants or a category of land development as per the criteria determined in its policy on development charges;

'Spatial Planning and Land Use Management Act' means the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);

'this Act' includes any regulation made under this Act; and

'unit impact' means the average demand that a land use, or mix of land uses, is expected to have on an engineering service.

(2) If any conflict relating to a provision of this Act arises between this Act and a provision of any other legislation, the provision of this Act prevails.''.

Amendment of section 2 of Act 12 of 2007

2. Section 2 of the principal Act is hereby amended—

(a) by the deletion in paragraph *(d)* for the word ''and'' at the end of subparagraph (ii);

(b) by the substitution in paragraph *(d)* for the full stop at the end of subparagraph (iii) of a semicolon; and

(c) by the addition of the following paragraph:

''*(e)* provide for development charges and matters connected therewith.''.

Substitution of section 3 of Act 12 of 2007

3. The following section is hereby substituted for section 3 of the principal Act:

''**Application of Act**

3. (1) This Act applies to—

(a) 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), and municipal base tariffs regulated under the Municipal Finance Management Act, the Municipal Systems Act or sector legislation; and

(b) development charges.

(2) Chapters 2 and 3 do not apply to development charges.''.

Insertion of Chapter 3A in Act 12 of 2007

4. The following Chapter is hereby inserted in the principal Act after Chapter 3:

"**CHAPTER 3A**

DEVELOPMENT CHARGES

Power to levy development charge

9A. (1) *(a)* A municipality may levy a development charge in respect of a land development application submitted to it in terms of section 33(1) read with section 45 of the Spatial Planning and Land Use Management Act.

(b) If a municipality decides to levy development charges, its municipal council must adopt a resolution for the municipality to levy the development charges, and thereafter the municipality must comply with this Act.

(2) A municipality must exercise its power to levy a development charge subject to—

(a) section 229 of the Constitution;

(b) this Act; and

(c) the policy on development charges adopted in terms of section 9B.

(3) Development charges collected by a municipality—

(a) must be used for purposes of funding or acquiring capital infrastructure assets in a timely and sufficient manner and to support current and projected land development in the municipal area;

(b) may, where capital infrastructure exists, be used to repay funds borrowed by the municipality.

(4) The amount of a development charge must be—

(a) proportional to the extent of the demand that the land development is projected to create for existing or planned bulk engineering services; and

(b) calculated on the basis of a reasonable assessment of the costs of providing existing or planned bulk engineering services.

(5) Unless otherwise provided for in the conditions of approval of a land development, an applicant must pay the full amount of a development charge before developing or utilising the land following an approval by—

(a) a Municipal Planning Tribunal in terms of section 35(1) of the Spatial Planning and Land Use Management Act; or

(b) an official authorised in terms of section 35(2) of the Spatial Planning and Land Use Management Act in respect of that land development.

Adoption and contents of policy on development charges

9B. (1) *(a)* A municipal council must adopt a policy consistent with this Act on the levying of development charges in the municipality.

(b) The content and structure of a municipality's policy on development charges may be prescribed.

(2) A policy on development charges must—

(a) treat applicants liable for development charges equitably and fairly;

(b) ensure that there is no duplication of costs in the manner in which development charges are calculated;

(c) set out the methodology for the calculation of a unit cost per engineering service—

(i) which must be determined in the prescribed manner and which must include all land costs, professional fees, materials, labour and reasonable costs of construction, and any other prescribed costs;

(ii) such that the unit cost for each engineering service is adjusted by the municipality on an annual basis during the budget

preparation process referred to in section 21 of the Municipal Finance Management Act, taking into account the inflationary impact; and

(iii) in a manner that the unit cost for each engineering service is re-calculated at least once every five years or within such longer period as is approved in writing by the Minister, taking into account the current and planned capacity for each engineering service at the date of re-calculation, and any other relevant factors;

(d) set out standard unit impacts for each engineering service in respect of each land use or category of land uses that are applied in the municipal land use scheme, in a manner that—

(i) the impact of any authorised land use on an engineering service is calculated as the unit impact determined for that land use multiplied by the number of units authorised;

(ii) the impact of the land development is calculated as the difference between the impact on an engineering service of the authorised land use at the date of the land development application, and that of the land use proposed in the land development application, provided that the minimum impact is zero; and

(iii) the impact of the land development can be multiplied by the unit cost per engineering service to determine the total development charge;

(e) determine the criteria to be applied by the municipality when—

(i) calculating development charges with reference to engineering service zones, provided that the criteria for identification of engineering service zones must reflect the technical factors relevant to each engineering service and provided further that no part of a municipality may fall in more than one engineering service zone in respect of an engineering service; or

(ii) granting a specific category of applicants or a specific category of land developments, a reduction or exemption in the development charge payable in respect of the land development; and

(f) specify any engineering service zones determined in accordance with the criteria referred to in paragraph *(e)*(i).

(3) A municipal council must publish the adjusted unit costs referred to in subsection (2)*(c)* within two months of approving the municipal budget.

(4) The policy on development charges referred to in subsection (1) may provide for the payment of a development charge in tranches in accordance with a payment schedule for specified categories of land development, such as which payment is due and payable before developing or utilising the land, unless the municipality and an applicant agree otherwise.

(5) Despite subsection (2)*(d)*, the policy on development charges may provide for the municipality, at its own instance or on request by an applicant, to increase or reduce the calculated impact of a land development on external engineering services, so as to reflect the actual anticipated demand for one or more of the required external engineering services, where exceptional circumstances, as prescribed, justify such an increase or reduction.

Community participation

9C. (1) Before a municipality adopts a policy on development charges, the municipality must—

(a) follow a process of community participation that is consistent with Chapter 4 of the Municipal Systems Act; and

(b) comply with subsection (2).

(2) The municipality must—

(a) display the draft policy on development charges for a period of at least 30 days in the manner provided for in section 21A of the Municipal Systems Act; and

(b) advertise in the media, in the manner provided for in section 21 of the Municipal Systems Act, a notice—

(i) stating that—

(aa) a draft policy on development charges has been prepared for submission to the municipal council; and

(bb) the draft policy on development charges is available at the municipality's head and satellite offices and libraries for public inspection during office hours and, if the municipality has an official website or a website available to it, that the said draft policy is also available on that website; and

(ii) inviting the local community to submit comments and representations to the municipality concerned within a period specified in the notice, which period may not be less than 30 days.

(3) A municipal council must take all comments and representations into account when finalising the draft policy on development charges.

By-laws to give effect to policy on development charges

9D. (1) A municipality must adopt and publish by-laws, in terms of sections 12 and 13 of the Municipal Systems Act, to give effect to the implementation of its policy on development charges.

(2) The by-laws made in terms of subsection (1) may differentiate between—

(a) engineering services;

(b) categories of applicants; and

(c) categories of land developments,

in respect of which development charges may be payable.

(3) A municipality's by-laws on development charges may be integrated into other by-laws relating to municipal planning or a related area of municipal legislative competence.

Rebate and exemption

9E. (1) If a municipality has opted to levy development charges in terms of section 9A(1), it may only—

(a) grant a rebate for a category of applicants or a category of land developments through reducing the development charge payable in respect thereof; or

(b) exempt a category of applicants or a category of land developments from paying development charges,

where it has set out the criteria for rebate or exemption in its policy on development charges.

(2) If a rebate or exemption is granted in terms of subsection (1), the municipality must set out the reasons and identify the alternative funding source for the required bulk engineering services, to the value of the rebate or the exemption.

(3) When granting a rebate or exemption in terms of subsection (1) in respect of categories of applicants and categories of land developments, a municipality may determine such categories in accordance with the criteria set out in its policy on development charges.

(4) If a land development satisfies the criteria for rebate or exemption in terms of the municipality's policy on development charges and the bulk engineering services for that land development have been paid for, or have been budgeted to be funded through a transfer from another sphere of government, the municipality must grant a rebate or exemption to the extent of that transfer.

(5) Before a municipality grants a rebate or exemption, it must calculate the development charge as if it were payable.

(6) The manner in which a rebate or exemption may be granted by a municipality may be prescribed.

Engineering services agreement

9F. An engineering services agreement must—

(a) be concluded in respect of any approved land development which necessitates the installation of internal engineering services or external engineering services, whether by the municipality or an applicant;

(b) be consistent with the conditions of approval of the land development;

(c) in the event of any changes to the conditions of approval of the land development, be amended to the extent necessary for consistency with the changed conditions of approval; and

(d) include provisions regulating at least the following matters:

(i) The nature and extent of the internal engineering services or external engineering services that must be installed by the municipality or an applicant;

(ii) the timing of commencement and completion of the internal engineering services or external engineering services that must be installed by the municipality or an applicant;

(iii) the amount of an applicant's costs of installation, or the process for determining that amount, where an applicant is to install link engineering services or bulk engineering services, including the process, after installation, for making any adjustments to that amount;

(iv) dispute resolution;

(v) the engineering and other standards to which the installed internal engineering services or external engineering services must conform;

(vi) external engineering services of greater capacity than that which is required by the applicant; and

(vii) the party responsible for the ownership of the internal engineering services after completion.

Installation of external engineering services by applicant

9G. (1) A municipality which levies development charges may agree in writing with an applicant that the applicant installs all or part of the bulk engineering services required for an approved land development, and the municipality may off-set the costs of installation of such bulk engineering services against the associated development charge.

(2) The costs referred to in subsection (1) must be determined in the prescribed manner.

(3) Upon completion, any capital infrastructure asset installed by an applicant in accordance with an agreement referred to in subsection (1) becomes the property of the municipality, and the municipality bears the responsibility of ensuring that registration of transfer of any rights in the affected capital infrastructure asset to the municipality is effected, to the extent necessary.

(4) A municipality may require that bulk engineering services are installed to accommodate a greater capacity than that which is required for the land development, in order to support future development in the area of the land development as determined by the municipality.

(5) If in the circumstances provided for in subsection (4) the cost of installing bulk engineering services by an applicant exceeds the development charge for the land development, the municipality must reimburse or off-set the amount in excess of the development charge, in accordance with an agreed payment schedule, by a period not exceeding three years from the date of completion of the installation by an

applicant, unless an applicant waives his or her right to reimbursement of that amount or any part thereof.

(6) A municipality may require that link engineering services are installed to accommodate a greater capacity than that which is required for the land development, in order to support future development in the area of the land development.

(7) If in the circumstances provided for in subsection (6), the municipality does require the installation of link engineering services to accommodate a greater capacity, the municipality must reimburse or off-set the amount of the development charge by the difference between the costs of the link engineering services installed, and the costs of those link engineering services that would have been required for that land development.

(8) The installation of external engineering services by an applicant as contemplated in this section does not constitute an external mechanism for the provision of municipal services as contemplated in section 76 of the Municipal Systems Act.

Non-installation of bulk engineering services by municipality

9H. (1) If a municipality fails to complete the installation of bulk engineering services within a period of 12 months from the completion date as stipulated in an engineering services agreement, the municipality must, subject to subsection (2), reimburse the applicant that portion of the development charge which is attributable to the failure, with interest charged at the applicable rate, as determined in terms of section 80(1)*(a)* of the Public Finance Management Act, 1999 (Act No. 1 of 1999), calculated from the date of completion as stipulated in the engineering services agreement.

(2) *(a)* Despite subsection (1), the municipality and an applicant may agree to extend the time period for completion of the bulk services by the municipality.

(b) Where the municipality completes the installation within such extended time period, it has no obligation to reimburse an applicant that portion of the development charge or any interest thereon.

Bulk and link engineering services as part of internal engineering services

9I. Where a bulk or link engineering service is intended to service subsequent developments and traverse the internal boundaries of the land development by an applicant—

(a) the municipality and the applicant must agree that the service be regarded as an external or internal engineering service; or

(b) if the municipality and the applicant do not agree as contemplated in paragraph *(a)*, the municipality's determination applies.

Dispute resolution

9J. (1) A person whose rights are affected by a decision regarding development charges taken by a municipality, may appeal against that decision in accordance with the mechanism provided for in section 62 of the Municipal Systems Act.

(2) A dispute arising in relation to any matter regulated by an engineering services agreement must be resolved in accordance with the dispute resolution mechanism provided for in that agreement.

Delegations

9K. (1) Except to the extent provided otherwise in this Chapter or in any other legislation, a power or duty conferred upon a municipality in terms of this Chapter, other than the power of a municipal council to adopt a development charges policy and by-law, may be delegated to an official of the relevant municipality.

(2) A delegation in terms of subsection (1)—

(a) must be in writing;

(b) is subject to such limitations and conditions as the person who made the delegation may impose in a specific case; and

(c) does not divest the person who made the delegation of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(3) The person who made the delegation may confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued to any person as a result of the decision.

Financial misconduct

9L. Section 171 of the Municipal Finance Management Act applies with the necessary changes required by the context, where an official of a municipality wilfully or negligently—

(a) contravenes any provision of this Act;

(b) fails to comply with a duty imposed by a provision of this Act or fails to comply with a duty delegated to him or her in terms of this Act; or

(c) provides incorrect or misleading information in any document which in terms of the requirements of this Act must be submitted to the municipal council.''.

Amendment of section 10 of Act 12 of 2007

5. Section 10 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph *(b)* of the following paragraphs:

''*(b*A*)* a method or methods for calculating development charges;

*(b*B*)* the information to be submitted by an applicant to a municipality when applying for a rebate or exemption to the development charge payable;

*(b*C*)* requirements for municipal accounting and financial reporting in relation to municipal development charges, including the format for reporting on municipal development charges revenue and expenditure;

*(b*D*)* matters relating to the installation of external engineering services by an applicant instead of the payment of a municipal development charge;

*(b*E*)* model engineering services agreements for use by any municipality in the implementation of Chapter 3A, which may be adjusted to the requirements of the municipality;''.

Amendment of legislation and transitional provision

6. (1) Subject to subsection (2), the legislation mentioned in the Schedule is hereby amended as set out in the Schedule.

(2) A municipality which levies development charges in terms of a pre-existing policy or by-law, as at the date of commencement of this Act, must ensure that it complies with this Act within 36 months after the date of commencement of this Act.

Substitution of long title of Act 12 of 2007

7. The following long title is hereby substituted for the long title of the principal Act:

''**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; to provide for development charges; and to provide for matters connected therewith**.''.

Amendment of arrangement of sections of Act 12 of 2007

8. The arrangement of sections of the principal Act is hereby amended by the insertion after item 9 of the following Chapter:

"CHAPTER 3A

DEVELOPMENT CHARGES

9A. Power to levy development charge
9B. Adoption and contents of policy on development charges
9C. Community participation
9D. By-laws to give effect to policy on development charges
9E. Rebate and exemption
9F. Engineering services agreement
9G. Installation of external engineering services by applicant
9H. Non-installation of bulk engineering services by municipality
9I. Bulk and link engineering services as part of internal engineering services
9J. Dispute resolution
9K. Delegations
9L. Financial misconduct".

Short title and commencement

9. This Act is called the Municipal Fiscal Powers and Functions Amendment Act, 2022, and takes effect on a date to be determined by the President by proclamation in the *Gazette*.

SCHEDULE

LAWS AMENDED OR REPEALED

(Section 6)

No. and year of Act	Short title of Act	Extent of repeal or amendments
Act No. 16 of 2013	Spatial Planning and Land Use Management Act, 2013	**1.** The amendment of section 1— *(a)* by the insertion after the definition of "body" of the following definition: " **'bulk engineering services'** means capital infrastructure assets associated with that portion of an external engineering service which is intended to ensure delivery of municipal engineering services for the benefit of multiple users or the community as a whole, whether existing or to be provided as a result of development in terms of a municipal spatial development framework."; and *(b)* by the insertion after the definition of "land use scheme" of the following definition: " **'link engineering services'** means the capital infrastructure assets associated with that portion of an external engineering service, which links an internal engineering service to the applicable bulk engineering services.". **2.** The amendment of section 49— *(a)* by the substitution for subsection (2) of the following subsection: "(2) A municipality is responsible for the provision of external engineering services: Provided that link engineering services are installed by an applicant and that the municipality may require that such services are installed to provide a greater capacity than the land development itself needs, subject to the municipality reimbursing the applicant accordingly, unless the applicant waives his or her claim to reimbursement or the value of installing the additional capacity is set off against the applicable development charges liability."; and *(b)* by the addition of the following subsection: "(6) A municipality may agree to contribute towards the cost of link engineering services, where the applicant's provision of link engineering service that meet the minimum standards of the municipality shall result in capacity that exceeds the requirements of the land development itself: Provided that the maximum contribution of the municipality does not exceed the amount which represents the difference between the cost associated with meeting the minimum standard and the cost of the actual requirements of the land development in question.". **3.** The amendment of Schedule 1— *(a)* by the substitution in paragraph *(y)* for the words preceding subparagraph (i) of the following words: "regulate the provision of municipal engineering services **[and the imposition of development charges]**, including—"; and *(b)* by the deletion in paragraph *(y)* of subparagraphs (iv) and (vi).

MEMORANDUM ON THE OBJECTS OF THE MUNICIPAL FISCAL POWERS AND FUNCTIONS AMENDMENT BILL, 2022

1. BACKGROUND

1.1 Section 229 of the Constitution of the Republic of South Africa, 1996 (''the Constitution''), empowers municipalities, where authorised by national legislation, to impose taxes, levies and duties appropriate to local government (other than income tax, VAT, general sales tax or customs duty).

1.2 Section 40(7)*(b)* of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), enables a municipal planning tribunal, when approving a land development application, to impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any development charges.

1.3 Many municipalities face fast-growing needs for investment in infrastructure so that they can deliver engineering services. These investments are required to ensure access to basic services, to meet the needs of growing populations and economies, as well as to renew existing assets.

1.4 Municipal service delivery is financed through a fiscal framework that is based on a clear assignment of fiscal powers and functions that empower municipalities to raise property rates and user charges on electricity distribution, water and sanitation services and solid waste collection. These primary sources of revenue are supplemented by intergovernmental transfers that support the operating costs of basic service delivery to poor households, as well as related national development priorities. Municipalities may use any operating surpluses generated from these revenues to finance capital investment programmes, again supplemented by intergovernmental transfers, as well as by funds that have been borrowed to finance infrastructure investment programmes.

1.5 Municipal development charges complement these sources of capital finance, by providing a direct charge to beneficiaries of existing and planned infrastructure installed to enable an intensification of land use. Development charges are thus an additional source of capital finance, which enhance the efficiency and volume of municipal capital financing through—

- ensuring that the beneficiaries of infrastructure pay a fair share of the costs of installing it, relative to other residents;
- releasing resources that a municipality would otherwise have dedicated to meeting these needs to be spent on other development priorities; and
- providing an additional revenue stream to support municipal borrowing programmes, where applicable.

1.6 In the case of private sector land development, there is provision in various pre-1994 provincial laws for municipalities to require a contribution from applicants, towards the costs of providing infrastructure to accommodate the additional load that their developments place on municipal bulk infrastructure. This requirement was typically imposed as a condition of a land use approval given in terms of most pre-1994 provincial town planning ordinances.

1.7 For both municipalities and applicants to budget and plan efficiently requires a robust legal basis on which development charges are levied, linked to long term spatial and infrastructure planning systems. The Municipal Fiscal Powers and Functions Bill, 2022 (''the Bill''), provides for a uniform, consistent, transparent and equitable basis on which municipalities can calculate and levy development charges on applicants for land development. The Bill requires that development charges are paid by both the public and

private sectors, in order to ensure that a substantial portion of municipal bulk infrastructure investment can be financed on a 'user pays' principle, with the needs of poor households directly and transparently supported through public subsidies, including intergovernmental transfers.

2. PURPOSE

The Bill proposes amendments to the Municipal Fiscal Powers and Functions Act, 2007 (Act No. 12 of 2007) ("the Act"), to provide for, among other things, a regime for municipalities to levy development charges.

3. CLAUSE BY CLAUSE ANALYSIS

3.1 **Clause 1**

Clause 1 of the Bill seeks to substitute section 1 of the Act and includes new definitions to assist in the interpretation of the Act, and also provide that if there is a conflict between a provision of the Act and other legislation, the provision of the Act prevails.

3.2 **Clause 2**

Clause 2 proposes the insertion of paragraph *(e)* in section 2 of the Act to provide for development charges as one of the objects of the Act.

3.3 **Clause 3**

The Bill proposes the substitution of section 3 of the Act to provide for the application of the Act and for the exclusion in the application of Chapter 2 to development charges, of property rates regulated in terms of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004), and municipal base tariffs regulated under the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) ("the Municipal Systems Act"), or sector legislation.

3.4 **Clause 4**

Clause 4 proposes the insertion of Chapter 3A which deals with development charges and stipulates as follows:

3.4.1 Clause 9A provides for a power for municipalities to levy development charges and establishes the basis on which they are calculated.

3.4.2 Clause 9B requires each municipality to approve a policy on development charges and specifies the minimum contents of these policies.

3.4.3 Clause 9C requires a public participation process before a municipality adopts a policy on development charges.

3.4.4 Clause 9D allows a municipality to adopt and publish by-laws to give effect to the implementation of its development charges.

3.4.5 Clause 9E allows a municipality which decides to levy development charges to grant a rebate for, or exempt, a category of applicants or category of land developments through reducing the development charges payable or exempting a category of applicants or a category of land developments from paying development charges, where it has set out a criterion for such rebate or exemption in its policy on development charges.

3.4.6 Clause 9F provides for engineering services agreements to regulate the terms and conditions of the installation of engineering services.

3.4.7 Clause 9G permits a municipality to set off the cost of infrastructure installed by an applicant against a development charge.

3.4.8 Clause 9H deals with the consequences of a municipality not providing infrastructure for which a developer has paid a development charge.

3.4.9 Clause 9I provides for instances where bulk and link engineering services are part of internal engineering services.

3.4.10 Clause 9J provides for a mechanism to resolve a dispute of a person whose rights are affected by a decision regarding development charges.

3.4.11 Clause 9K provides for the delegation of powers conferred upon a municipality.

3.4.12 Clause 9L provides for financial misconduct where there is, among other things, a contravention of Chapter 3A.

3.5 **Clause 5**

Clause 5 proposes the substitution of subsection (1) in section 10 of the Act to extend the Minister's power to make regulations for the effective implementation of Chapter 3A.

3.6 **Clause 6**

Clause 6 provides for a Schedule, in order to amend the Spatial Planning and Land Use Management Act, 2013. Clause 6 also provides for a transitional measure whereby a municipality, which levies development charges in terms of a pre-existing policy or by-law as at the date of coming into effect of the amendments proposed in the Bill, must ensure that it complies with the envisaged Municipal Fiscal Powers and Functions Amendment Act, 2022, within 36 months from the commencement of the said Act.

3.7 **Clause 7**

Clause 7 proposes the substitution of the long title of the Act to, among other things, make reference to development charges.

3.8 **Clause 8**

Clause 8 provides for the short title of the Act and its commencement.

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

- Municipalities;
- Financial and Fiscal Commission;
- South African Local Government Association;
- South African Land Owners Association;
- Metropolitan Municipalities and Secondary Cities;
- National Department of Rural Development and Land Reform;
- National Department of Human Settlements;

- National Department of Environment, Forestry and Fisheries;
- National Department of Transport; and
- South African National Roads Agency SOC LTD.

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill will enhance the ability of municipalities to raise capital financing to support infrastructure investment. National and provincial departments, state agencies and state-owned enterprises that previously may not have paid any equivalence of development charges may now have to do so to ensure timeous provision of bulk infrastructure to serve their project, unless municipalities direct available grants to cover this cost. This cost will be offset by the benefit of reduced delays in the provision of infrastructure to support these developments.

6. PARLIAMENTARY PROCEDURE

6.1 The Constitution prescribes procedures for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.

6.2 We have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.

6.3 The established test for classification of a Bill is that any Bill with provisions which in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more a Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.

6.4 Therefore, the issue to be determined is whether the provisions contained in the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution.

6.5 The Bill primarily seeks to amend the Act to provide for, among other things, a regime for municipalities to levy development charges, as a condition of granting or approving of the right to persons to use or develop land in that municipality.

6.6 The Bill seeks to regulate the power of municipalities to levy development charges in respect of a land development application submitted to the municipality in terms of section 33(1) read with section 45 of the Spatial Planning and Land Use Management Act, 2013, or a municipal planning by-law. In this regard the Bill seeks to insert Chapter 3A in the Act. Chapter 3A gives a municipality the power to levy development charges, the power to adopt a policy on levying of development charges and community participation in the adoption of policy on development charges, in accordance with Chapter 4 of the Municipal Systems Act.

6.7 The proposed Chapter 3A provides that a municipality may adopt and publish by-laws, in terms of the Municipal Systems Act to give effect to the implementation of its policy on development charges, and the municipality may grant rebates or subsidies to regulate reductions or exemptions to the obligation to pay development charges. Chapter 3A also provides for issues relating to engineering services agreements in respect of approved land

development which necessitates the installation of internal engineering services or external engineering services, installation of external engineering services by applicants, non-installation of bulk engineering services by a municipality, dispute resolution in respect of the right of a person to appeal against a decision regarding development charges, delegations and financial misconduct.

6.8 The Bill empowers the Minister to make regulations for the effective implementation of matters relating to development charges and the municipality's policy on development charges.

6.9 In addition, the Bill seeks to amend the Spatial Planning and Land Use Management Act, 2013, in a Schedule, to insert new definitions and effect amendments relating to development charges for land development.

6.10 The provisions of the Bill have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.

6.11 In our view, the subject matter of the provisions of the Bill does not fall within any of the functional areas listed in Schedule 4 or 5 to the Constitution and it does not affect provinces whereby the procedure set out in section 75 of the Constitution would be applicable.

6.12 Since the Bill seeks to establish a system for municipalities to impose levies for land development applications as a condition for granting or approval of such an application for persons to use or develop land in a municipality, we are of the view that this is an ordinary Bill and must thus be dealt with by Parliament in accordance with the procedure established by section 75 of the Constitution.

6.13 We are also of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)*(a)* of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities or provisions pertaining to any matter referred to in section 154(2) of the Constitution.