

REPUBLIC OF SOUTH AFRICA

MUNICIPAL FISCAL POWERS AND FUNCTIONS BILL

*(As introduced in the National Assembly as a section 75 Bill; Bill published in
Government Gazette No. [-] of 2007) (The English text is the official text of
the Bill)*

(MINISTER OF FINANCE)

[B —2007]

BILL

To regulate the exercise by municipalities of their power to impose surcharges on fees for services under section 229(1)(a) and to provide for the authorisation of taxes, levies and duties that municipalities may impose under section 229(1)(b) of the Constitution of the Republic of South Africa, 1996; and to provide for matters connected therewith.

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

ARRANGEMENT OF SECTIONS

CHAPTER 1: INTERPRETATION AND OBJECTS OF ACT

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2. Purpose of Act
3. Application of Act

CHAPTER 2: MUNICIPAL TAXES

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CHAPTER 1

INTERPRETATION AND OBJECTS OF ACT

Definitions and Interpretation

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

“**Act**” includes any regulation or determination made or instruction given under this Act;

“**category of municipality**” means a category A, B or C municipality referred to in section 155(1) of the Constitution;

“**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;

“**MEC for local government**” means the member of the Executive Council of a province who is responsible for local government in that province;

“**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 –

(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;

(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;

“**municipal service**” means any of the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5;

“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 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 section 2(1) of the Organised Local Government Act, 1997 (Act No. 52 of 1997), to represent local government nationally or provincially; and

“prescribe” means prescribe by regulation in terms of section 10.

(2) If any conflict, relating to the matters dealt with in this Act, arises between this Act and the provisions of any other law save the Constitution or any Act expressly amending this Act, the provisions of this Act will prevail.

Purpose of Act

2. The objects of this Act are to -

- (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
- (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);

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;
- (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.

Application of Act

3. The 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 MUNICIPAL TAXES

Authorisation of municipal tax

4. (1) The Minister may of his or her own accord or on application by a municipality, group of municipalities or organised local government in accordance with section 5 authorise a municipal tax.

(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
- (b) may consult any other organ of state or interested persons.

(3) The Minister authorises a municipal tax by prescribing the regulations referred to in 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

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- (a) set out the reasons for the imposition of the proposed municipal tax;
- (b) the purpose or 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;
- (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;
 - (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;
 - (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; and
 - (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 provincial government, and organised local

government and municipalities, where relevant, and the outcomes of such consultations;

- (i) give particulars of any consultations with the South African Revenue Service and such 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) In the event that the Minister intends authorising the municipal tax in respect of which an application was submitted, the Minister must -

- (a) notify the municipality, municipalities or organised local government and the Minister responsible for local government in writing within 6 months of submission of the application of his or her intention; and
- (b) by not later than 12 months after the notification contemplated in paragraph (a) prescribe the regulations referred to 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 6 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 decision and the reasons therefore.

Regulations authorising and regulating the imposition and administration of municipal tax

6. The regulations referred to in sections 4(3) and 5(2)(b) –

- (a) must authorise a municipality, group of municipalities or a kind of municipality, which may be defined either in relation to the capacity of a municipality, a category, type or budgetary size of municipality, the powers and functions exercised by a municipality or in any other appropriate manner, 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;
 - (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 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 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 paragraphs (i) or (ii) may be increased; and
- (d) may –
- (i) limit the period during which the municipal tax may be imposed;
 - (ii) in respect of an specific purpose tax limit the purpose or purposes for which revenue derived from the collection of the municipal tax be utilised;
 - (iii) specify that a percentage of the revenue derived from the collection of the specific purpose tax must be utilised for a specific purpose or purposes; and
- (e) may include any other matter necessary for the proper imposition and administration of the municipal tax.

Collection of municipal taxes

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.

CHAPTER 3 MUNICIPAL SURCHARGES

Norms and standards

8. (1) The Minister, in accordance with clause 10, 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.

- (2) The norms and standards referred to 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;
 - (ii) provide bands or ranges within which municipal surcharges may be imposed;
 - (b) differentiate between different -
 - (i) kinds of municipalities, which may be defined either in relation to the capacity of a municipality, a category, type or budgetary size of municipality or in any other appropriate manner;
 - (ii) types of municipal services;
 - (iii) levels of municipal services;
 - (iv) categories of users, debtors and customers;
 - (v) consumption levels; and
 - (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.

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 referred to in section 8.

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

(c) An exemption in terms of paragraph (b) may –

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

(2) A municipality must when complying with section 75A of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), disclose any municipal surcharges.

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

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; and
- (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.

(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 or repeal of regulations takes effect at the commencement of the municipal financial year following the municipal financial year in which the amendment or repeal were affected only.

(4) Before regulations in terms of this section are promulgated, the Minister must—

- (a) consult –
 - (i) the Minister responsible for local government;
 - (ii) the relevant cabinet members on any matter affecting their executive authority;
 - (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; and
- (b) publish the draft regulations in the *Government Gazette* for public comment.

(5) Regulations made in terms of this section must be submitted to Parliament for parliamentary scrutiny at least one month before their promulgation.

Amendments to this Act

11. Draft 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.

Transitional provisions

12. (1) A municipality must within 2 years of the date on which this Act commences, apply to the Minister in accordance with the provision of this Act

for the authorization 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) and the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990), imposed by that municipality prior to the commencement of this Act.

(2) A tax referred to in subsection (1) lapses 2 years –

- (a) after the date on which this Act commences, if a municipality fails to apply for authorisation in accordance with subsection (1);
or
- (b) after the Minister has notified the municipality that an application referred to in subsection (1) is not approved.

Amendment of legislation and savings

13. (1) 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.

(2) (a) Despite subsection (1), any regional establishment levy or regional services levy that became due and payable in terms of the Regional Services Council Act or the KwaZulu and Natal Joint Services Act before or on 30 June 2006 may be collected by a municipal council in accordance with

the provisions of those Acts.

(b) Any regional establishment levy or regional services levy referred to in paragraph (a) in respect of which a summons for the collection thereof has not been issued before or on 30 June 2008 lapses on that date.

(c) Any regional establishment levy or regional services levy imposed in terms of the Regional Services Council Act or the KwaZulu and Natal Joint Services Act after 30 June 2006 lapses on the commencement of this Act.

Short title and commencement

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

SCHEDULE AMENDMENT OF LEGISLATION

No. and year of Act	Short title of Act	Extent of repeal or amendment
Act 117 of 1998	Local Government: Municipal Structures Act, 1998	1. Repeal of section 93(6)
Act 32 of 2000	Local Government: Municipal Systems Act, 2000	Repeal of section 86A(1)(d)

MEMORANDUM ON THE OBJECTS OF THE MUNICIPAL FISCAL POWERS AND FUNCTIONS BILL, 2006

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 authorized 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 authorization 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 organized local government and they may propose any tax not prohibited by the Constitution. The Minister of Finance is also empowered to of his or her own accord, authorize a municipal tax. The Bill regulates the process by which municipal taxes are authorized 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 will, in the instance of Regional Services Councils (RSC) and Joint Service Board (JSB) levies lapse on 30 June 2006, and in other instances be subject to approval within 2 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), 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) 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 7 per cent or R 6,6 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 (8 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 R1 238 million to R1 575 million (average

R737 million) for metropolitan municipalities and between R 3 million and R165 million (average R45 million) for district municipalities. Revenue from RSC and JSB levies of approximately R7 million 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 THE 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. SUMMARY OF THE BILL

The following is a brief summary of the Bill:

- Clause 1: presents definitions of terms used in the Bill.
- Clause 2: sets out the purpose of the Bill.
- Clause 3: sets out the application of the Bill.
- Clause 4: authorizes the Minister to prescribe compulsory national norms and standards for imposing municipal surcharges, which may include, amongst others, maximum municipal surcharges that may be imposed by municipalities on fees for services provided by them or on their behalf.
- Clause 5: sets out the obligations of municipalities in respect of municipal surcharges.
- Clause 6: provides that the Minister may of his or her own accord or on application by a municipality, group of municipalities or organised local government authorise a municipal tax.
- Clause 7: regulates the application process for authorization of municipal taxes in respect of applications received.
- Clause 8: provides for matters that must and may be addressed in regulations authorizing and regulating the imposition and administration of a municipal tax.
- Clause 9: provides that 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 8, designated another person for that purpose.
- Clause 10: empowers the Minister of Finance to make regulations prescribed in terms of this Act or necessary for the effective implementation of the Act, provides for the amendment and review of regulations, provides that any amendment or revocation of authorisation notices and certain regulations take effect at the commencement of the next municipal financial year only and provides for consultative processes before the promulgation of regulations.

- Clause 11: provides that draft legislation directly or indirectly amending the Bill, or providing for the enactment of subordinate legislation that may conflict with the Bill, may be introduced in Parliament by the Minister only or only after the Minister has been consulted on the contents of the draft legislation.
- Clause 12: provides for the authorisation of municipal taxes imposed by municipalities prior to the commencement of the Bill.
- Clause 13: provides for the amendment of the Local Government: Municipal Structures Act, 1998, the Local Government: Municipal Systems Act, 2000 and the Local Government: Municipal Demarcation Board Act, 1998 (Act 27 of 1998).
- Clause 14: provides for the short title of the Act.

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

The following institutions were consulted on the Bill –

- 4.1 The Finance and Fiscal Commission;
- 4.2 The South African Local Government Association;
- 4.3 The Department of Provincial and Local Government; and
- 4.4 Municipalities.

5. FINANCIAL IMPLICATIONS TO THE STATE

- 5.1 The Bill will not have financial implications for the national or provincial government.
- 5.2 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.
- 5.3 There may be financial implications for those municipalities where existing surcharges raised are excessive which will need to be reduced on implementation of the norms and standards for surcharges.
- 5.4 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.

6. CONSTITUTIONAL IMPLICATIONS

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

7. PARLIAMENTARY PROCEDURE

- 7.1 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.
- 7.2 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.