

**PENSION FUNDS AMENDMENT BILL,
ADDRESS TO THE NATIONAL ASSEMBLY BY THE
HONOURABLE DEPUTY MINISTER OF FINANCE,
JABU MOLEKETI, MP
14 JUNE 2007**

Madame Speaker, the Pensions Funds Amendment Bill, 2007, being debated in this House today addresses urgent technical and regulatory issues in the Pension Funds Act, 1956.

The House will remember that in 2001, the Pension Funds Second Amendment Act was passed. That Act primarily dealt with two important issues, that of the apportionment of surplus in a pension fund and minimum benefits for pensioners and members on withdrawal. The Second Amendment Act took a number of years to finalise given the emotive issues concerning the use of pension fund surpluses over the past few decades.

This House will also remember that the Act was vigorously debated at NEDLAC, and it was recognised that in many instances the former

members of pension funds were important contributors to the build up of pension fund surpluses over time. As a matter of equity, in any distribution of surplus, the former members would have to be considered. An equitable apportionment of surplus therefore involves all the stakeholders in a fund: former members, current members, pensioners, and employers.

This process naturally involves large sums of money, which in some cases could require an employer to repay surplus utilised improperly by the fund. The vast majority of pension funds have complied with the spirit and intention of the 2001 Act in apportioning the fund surplus. But not unexpectedly, given the sums involved, some legal challenges have been brought forth since 2001, as quick legal minds, and those seeking to avoid liability, scoured the Act for legal loopholes.

Madame Speaker, in many ways these challenges seek to subvert the spirit of the original legislation passed by this House, by interpreting the law in the narrowest sense possible. We would not do this House justice if we did not seek to reinforce and entrench the provisions and spirit of the 2001 legislation with regards to surplus

apportionment, thereby protecting the most disenfranchised in our society.

The Bill before this House therefore attempts to close the legal loopholes by clarifying certain provisions related to surplus utilised improperly in the past by employers and other provisions relating to surplus generally. The proposed changes contained in the Bill follow the same principle ratified by this House in 2001, namely that surplus apportionment is not a so-called "witch-hunt" against employers but rather a process of correcting for abuse and applying fairness in the surplus apportionment process. It is about ensuring that a proper balance of interest is struck between stakeholders.

I should add that although the Bill primarily involves a clarification of a variety of the provisions relating to surplus, it also addresses a number of other important issues, including:

- bringing bargaining council funds within the ambit of the Act, thereby affording their members the protection and oversight offered by the Registrar of Pension Funds, and recourse to the Pension Funds Adjudicator;

- codifying the duties of pension fund administrators, which follows debates and investigations into so-called "secret profits" retained by administrators;
- changes to the provisions governing the Pension Funds Adjudicator which seek to clarify the jurisdiction and operation of that office;
- a more equitable treatment of a non member spouse in the case of divorce. This will see an end to the inequitable treatment of divorcees whereby little or no growth is attached to the portion of the pension monies allocated to them by an order of court. The Bill also incorporates relationships recognised under the recently promulgated Civil Unions Act, and makes allowances for other orders of court, such as maintenance orders. These changes therefore provide further protections to dependants and other beneficiaries;
- Importantly, Madame Speaker, the Bill significantly increases the powers of the Registrar of Pension Funds, including the power to impose administrative penalties. This House is well aware of the several instances of abuse in the pensions and insurance sectors

which have been exposed in the past few years. Such abuse is often due to lax governance, inadequate disclosure, conflicts of interest, and poor trusteeship. In the face of such difficulties, not only do these problems need to be addressed, but the regulator requires sufficient powers to intervene where necessary to protect the interests of members. The provisions of this Bill will bring the supervisory powers of the Registrar in line with international standards and best practice.

In conclusion, this Bill is an important step forward in the continuing effort to protect the monies members faithfully contribute towards their retirement over their working lives. It will ensure that the original intention of this House in 2001 is adhered to and that all stakeholders, including former members, will be treated fairly in the apportionment of pension fund surplus. We also owe it to members to build not only a sound governance and legal framework, but also to provide those who police participants in the industry, in this case the Registrar of Pension Funds, sufficient powers whereby they can efficiently execute their duties.

These are urgent improvements to the regulatory architecture that can be instituted now for the benefit of all while we simultaneously set about the broader social security and retirement fund reform process.

Before closing, may I convey my thanks once again to Minister Trevor Manuel, the Director General of National Treasury, Lesetja Kganyago and his team, and the Portfolio Committee on Finance, under the chairmanship and steady hand of Mr Nlanhla Nene.

Madame Speaker, I hereby request that the House pass the Pension Funds Amendment Bill, 2007.