

REPUBLIC OF SOUTH AFRICA

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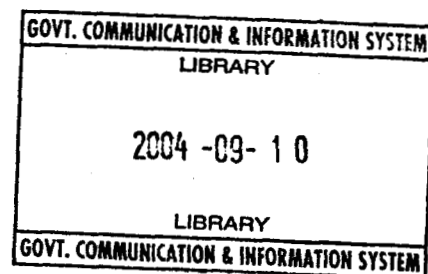
# PETROLEUM PIPELINES LEVIES BILL

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

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(MINISTER OF FINANCE)



[B 18—2004]

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# BILL

**To provide for the imposition of levies by the Petroleum Pipelines Regulatory Authority; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## Definitions

1. In this Act, unless the context indicates otherwise—
  - “**Authority**” means the Authority established by section 3 of the Petroleum Pipelines Act; 5
  - “**importer**” means the owner, at the point of importation, of petroleum imported into the Republic;
  - “**levy**” means the amount imposed under section 2;
  - “**Minister**” means the Minister of Minerals and Energy; 10
  - “**petroleum**” means petroleum as defined in the Petroleum Pipelines Act;
  - “**petroleum pipeline**” means a petroleum pipeline as defined in the Petroleum Pipelines Act;
  - “**Petroleum Pipelines Act**” means the Petroleum Pipelines Act, 2003 (Act No. 60 of 2003); 15
  - “**producer**” means a producer of petroleum from liquid or solid hydrocarbons in the Republic;
  - “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
  - “**refiner**” means a refiner of petroleum. 20

## Imposition of levies

2. (1) The Authority may by notice in the *Gazette*—
  - (a) impose levies for the purpose of meeting the general administrative and other costs of the Authority and the functions performed by the Authority;
  - (b) specify the intervals and times in respect of payment of such levies; 25
  - (c) determine interest as contemplated in section 4; and
  - (d) vary levies.
- (2) The levies imposed under subsection (1) must be—
  - (a) based on the amount of petroleum, measured in litres, delivered by importers, refiners and producers to inlet flanges of petroleum pipelines; and 30
  - (b) paid by the person holding the title to the petroleum immediately after it has entered the inlet flange.
- (3) Before imposing levies, varying levies, or determining interest, the Authority must—
  - (a) publish the proposed levies, variation or determination in such a manner as it considers appropriate in order to bring the proposed levies, variation or determination to the attention of stakeholders in the petroleum pipelines industry, together with a statement explaining the reasons for the proposed imposition or variation of levies or determination of interest and an invitation for representations to be made to the Authority within a specified and reasonable time; 35 40

- (b) have regard to any representation made to it in terms of paragraph (a);
- (c) give the Minister notice in writing of the proposed imposition or variation of levies, or determination of interest, and specify the period for which such imposition, variation or determination is intended to be operational;
- (d) provide the Minister with reasons for the imposition or variation of levies or determination of interest; 5
- (e) provide the Minister with evidence of consultation with stakeholders or attempts to consult with stakeholders in the petroleum pipelines industry and of the degree of concurrence among such stakeholders with regard to the imposition or variation of levies or determination of interest. 10

(4) The Minister must, with the concurrence of the Minister of Finance, within a period of 60 days after receiving a notice contemplated in subsection (3)(c), give the Authority written approval or disapproval of the proposed imposition, variation or determination and, in the event of disapproving that imposition, variation or determination, also give reasons for the disapproval thereof. 15

(5) After receipt of the notice as contemplated in subsection (4), the Minister may, with the concurrence of the Minister of Finance, recommend an alternative levy or interest determination.

(6) The Authority may impose or vary levies or determine interest under subsection (1) only after the levies or interest has been approved by the Minister with the concurrence of the Minister of Finance. 20

(7) The Authority must publish the notice contemplated in subsection (1) at least 30 days before the commencement of that imposition, variation or determination.

(8) The levies imposed, levies varied or interest determined under subsection (1) must be reviewed annually by the Authority. 25

### **Disposal and management of levies**

3. (1) The levies imposed, levies varied and interest determined under section 2(1) form part of the funds of the Authority.

(2) The levies and interest collected by the Authority must be paid into a bank account designated for that purpose by the Authority and approved by the National Treasury in terms of section 7(2) of the Public Finance Management Act. 30

(3) (a) At least six months before the start of the financial year of the Department of Minerals and Energy, or such other period as may be agreed upon between the Minister and the Authority, the Authority must submit to the Minister—

- (i) a budget of estimated revenue and expenditure for the next financial year of the Authority as required by section 53 of the Public Finance Management Act; and 35
- (ii) a business plan in the format prescribed under section 54(1) of the Public Finance Management Act, covering the affairs of the Authority for the following three financial years.

(b) The budget and business plan contemplated in paragraph (a) must be submitted for the approval of the Minister and the concurrence of the Minister of Finance. 40

### **Non-payment of levies**

4. (1) Where a levy is not paid by the person contemplated in section 2(2)(b) on the day such levy became due and payable, that person is, apart from payment of the levy, liable to interest calculated upon the unpaid amount of the levy from that date, subject to subsections (2) and (3). 45

(2) The calculation of interest due and payable to the Authority must be based on the uniform interest rate contemplated in section 80(1)(b) of the Public Finance Management Act.

(3) Levies and interest due shall be deemed to be a debt due to the Authority and may be recovered by the Authority by judicial process in any competent court. 50

### **Levy imposition to lapse after five years**

5. (1) Subject to subsection (2), any levy imposed in terms of section 2(1)(a) lapses five years after the day on which it was introduced.

(2) The Minister must, at least three months but not more than 12 months before the day on which an imposition of a levy contemplated in section 2(1)(a) would otherwise lapse, on written request of the Authority and with the concurrence of the Minister of Finance, give the Authority in writing approval or disapproval of a re-imposition of such levy and, in the event of disapproving the re-imposition, also give reasons for the disapproval thereof. 5

(3) Before approving a re-imposition contemplated in subsection (2), the Minister must commission a review of the performance of the Authority as contemplated in section 6.

#### **Assessment of performance of Authority**

6. (1) In this section, “performance” in relation to the Authority means all or any of the following matters: 10

- (a) The efficiency, economy and effectiveness of the Authority’s management of the financial resources at its disposal;
- (b) the benefits deriving from the Authority’s work to those who bear the levies and other charges imposed by the Authority; and 15
- (c) any other matter determined by the Minister in writing and with the concurrence of the Minister of Finance.

(2) The Minister may, after consultation with the Authority, appoint any person to conduct an assessment of, and report to the Minister and the Minister of Finance on the performance of the Authority if the Minister is satisfied that— 20

- (a) there is sufficient concern among stakeholders in the petroleum pipelines industry about the performance of the Authority to justify an assessment of that performance; or
- (b) the performance of the Authority is inadequate.

(3) (a) Notwithstanding subsection (2), the Minister must commission an assessment of the performance of the Authority at least once every five years. 25

(b) The person appointed to conduct the assessment contemplated in paragraph (a) must report to the Minister and the Minister of Finance.

#### **Short title and commencement**

7. This Act is called the Petroleum Pipelines Levies Act, 2004, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 30

## **MEMORANDUM ON THE OBJECTS OF THE PETROLEUM PIPELINES LEVIES BILL, 2004**

The Petroleum Pipelines Act, 2003 (Act No. 60 of 2003), provides for the establishment of the Petroleum Pipelines Regulatory Authority as custodian and enforcer of the national regulatory framework for the petroleum pipelines industry. The petroleum pipelines industry consists of petroleum pipelines, loading facilities and storage facilities. In terms of section 12(b) of the Petroleum Pipelines Act, 2003, the funds of the Petroleum Pipelines Regulatory Authority consist of, *inter alia*, "levies imposed by or under separate legislation". The Petroleum Pipelines Levies Bill, 2004 ("the Bill"), seeks to achieve that aim.

The Bill provides that the Petroleum Pipelines Regulatory Authority may impose levies on petroleum transported in petroleum pipelines. The levies will be based on the amount of petroleum transmitted, and are intended to pay for the costs incurred in the exercise of oversight over the petroleum pipelines industry by the Petroleum Pipelines Regulatory Authority.

The Bill provides for the Ministers of Minerals and Energy and of Finance to approve or disapprove the imposition or variation of levies or the determination of interest on overdue levies and to recommend alternatives.

### **CONSULTATION**

The following persons were asked to comment on the draft Money Bill: Oil Industry Associations and members — SAPIA (BP, Shell, Caltex, Engen, TotalFineElf, Sasol, PetroSA, Thebe); AMEF; Cosatu, Petronet. No comments were received.

### **FINANCIAL IMPLICATIONS FOR STATE**

There are no financial implications for the State, except that the levy will release the State of the financial burden of funding the Petroleum Pipelines Regulatory Authority.

### **PARLIAMENTARY PROCEDURE**

The State Law Advisers and the Department of Minerals and Energy are of the view that this Bill is a money Bill as contemplated in section 77 of the Constitution. In terms of section 77(2) of the Constitution all money Bills must be considered in accordance with the procedure established by section 75 of the Constitution.