**Report of the Select Committee on Appropriations on the *Special Appropriation Bill* [B24 – 2022] [National Assembly (Section 77)], Dated 02 December 2022**

The Select Committee on Appropriations, having considered the *Special Appropriation Bill* [B24 – 2022] (National Assembly – section 77), referred to it in terms of section 12 (15) of the Money Bills and Related Matters Act No. 9 of 2009 (as amended by the Money Bills Amendments Procedure and Related Matters Act, No. 13 of 2018) (the Money Bills Act), reports as follows**:**

1. **Introduction**

Section 213(2) of the Constitution of the Republic of South Africa, provides that money may be withdrawn from the National Revenue Fund only in terms of an appropriation by an Act of Parliament. The *Special Appropriation Bill* [B24 - 2022] was tabled by the Minister of Finance on 26 October 2022, during the tabling of the 2022 Medium Term Budget Policy Statement (MTBPS), and was referred to the National Council of Provinces and the Committee, for concurrence, on 01 December 2022, after it was passed by National Assembly.

1. **Public participation process**

To facilitate public participation and involvement, and in compliance with section 72 of the Constitution of the Republic of South Africa, an advertisement in all 11 official languages was published in national and community newspapers from 27 to 30 October 2022, inviting the general public and all interested stakeholders to make written submissions and comments on the Bill. Subsequently, in addition to receiving a briefing from National Treasury on the contents of the Bill and consulting with the Financial and Fiscal Commission (FFC) and the Parliamentary Budget Office (PBO), the Committee received written submissions from the Congress of South African Trade Unions (COSATU), the Public Service Accountability Monitor (PSAM) and the Organisation Undoing Tax Abuse (OUTA). All three stakeholders also made oral submissions during a virtual public hearing on 25 November 2022.

1. **National Treasury briefing**

National Treasury reported that the Bill proposed the following additional funding allocations in the 2022/23 financial year:

* R23.7 billion for the South African National Roads (Sanral) for repayment of its maturing debt and debt-related obligations.
* R3.4 billion for Denel SOE Limited (Denel) for the implementation of its turnaround plan.
* R2.9 billion for Transnet SOE Limited (Transnet) for the acceleration of the repair and maintenance of locomotives.

According to the National Treasury, these funds would only be disbursed once the Minister was satisfied that the required conditions have been met.

**3.1 Denel**

The funding requirement for Denel’s revised turnaround plan was R5.2 billion, of which R1.8 billion would be raised by Denel through the disposal of non-core assets and R3.4 billion through recapitalisation by government. The entity had realised R900 million through the Denel Medical Benefit Trust (DMBT) and anticipated realising the remaining balance from the sale of non-core assets by the end of March 2023. Denel would utilise the funds received from the fiscus and the disposal of its non-core assets to settle remaining current and legacy obligations, enabling it to manage existing threats of liquidation, including restructuring costs to stabilise and sustain Denel’s anticipated growth opportunities. Government would provide the funding subject to adherence to the following conditions:

**Pre-conditions:**

* Shareholder confirmation of support of the turnaround plan.
* Disposal of all identified non-core assets.
* Submission of a strategic equity partnership strategy.
* Surplus funds from the section 189 process of the Labour Relations Act No 66 of 1995 to be utilised to reduce government guaranteed debt.
* Funds for legacy obligations should be ring-fenced.
* The Denel monitoring committee must be re-established.

**Post-conditions:**

* The Department of Public Enterprises (DPE) must finalise a Memorandum of Co-operation with the Department of Defence within six months.
* The DPE must withdraw specified government guarantees.
* Denel must continue submitting its quarterly performance reports to the DPE and National Treasury.
* No bonuses may be paid, following receipt of recapitalisation and the period of the turnaround plan implementation.

**3.2 Transnet**

Transnet’s operational loss incurred in the 2021/22 financial year could be largely attributed to a shortage of freight rail locomotives; as its inability to repair and maintain its freight rail locomotives had an adverse impact on its domestic and export coal operations. The return of out-of-service freight rail locomotives would improve Transnet’s ability to service the coal industry and would benefit the South African economy. The allocation of R2.9 billion, to allow the entity to repair and maintain freight rail locomotives, was subject to the following conditions, which would be reviewed on an annual basis:

* Independent review of all freight rail corridors and associated port operations.
* Monthly report on the progress made in the rehabilitation of locomotives and the impact on volumes.
* Monthly report on progress made in addressing the operational challenges.
* Monthly update on the status of the Transnet debt.
* Transnet to avail the relevant representatives to discuss the monthly reports.
* PFMA section 54(2) applications to be approved by the Minister of Public Enterprises and the Minister of Finance.
* The DPE to include National Treasury in the PFMA section 54(2) pre-notification process.
* The DPE to consult National Treasury prior to the conclusion of the Transnet Shareholder Compact.

**3.3 Sanral**

To avert the pending Sanral default and the subsequent call on the Sanral government guarantee, it was recommended that a funding allocation of R23.7 billion be provided to Sanral for the repayment of the maturing debt and the interest thereon for the 2022/23 and 2023/24 financial years. Sanral government guarantees would be reduced in line with the allocated funds. Sanral could not raise or refinance debt until the Minister of Finance communicated otherwise. The allocation would be split into two tranches: R9 billion would be released within 10 days of the Bill being passed into law; and R14.7 billion would be released once the following conditions had been met:

* The Department of Transport must submit the draft Road Funding Policy to the National Treasury by 31 January 2023 for comments, prior to submitting the policy to Cabinet for public comment by 1 April 2023.
* Independent review of the Sanral supply chain management policy and related procurement processes.
* Independent review of the performance of the Sanral board.
* National and provincial government to sign an agreement on a solution for the Gauteng Freeway Improvement road network.

If the above conditions were not met by 31 March 2023, outstanding allocations would be returned to the National Revenue Fund; and the National Treasury may request updates on the progress made in meeting these conditions.

**4. Stakeholder submissions**

**4.1 Financial and Fiscal Commission (FFC)**

The Financial and Fiscal Commission (FFC) gave an overview of the purpose of the Bill and expressed appreciation for government’s commitment to continue promoting a growth friendly, fiscal consolidation policy path geared towards stabilising government debt. However, the maturity of SOEs debt payments and poor functionality posed a substantial risk to the fiscus. The challenges of SOEs had resulted in poor service delivery, poor financial management, less growth, massive unemployment, corruption and low business confidence. The FFC further cautioned that the poor performance of SOEs would result in persistent government guarantees and bail-outs to ensure their survival. SOEs considering themselves too big to fail and expecting constant bail-outs, imposed further pressure on contingent liabilities.

The FFC further submitted that SOE bail-outs were not fiscally sound and implored government to include stringent conditions that deterred SOEs from indulging in moral hazard behaviour. The FFC further noted that National Treasury had advised that the pre-conditions and conditions attached to bail-outs included financial and operational reports to ensure that money was used to repay debt and facilitate sustained development of the affected SOEs. The FFC further cautioned against the use of a Special Appropriation Bill to provide funding for SOEs, in addition to the Adjustments Appropriation Bill; as this signalled fiscal uncertainty, perpetuating the cycle of bailing out poorly performing SOEs.The FFC recommended that stringent conditions be attached to the provision of funding and that National Treasury, Denel, Transnet, and Sanral be transparent during the bail-out period and make all reports and conditions publicly available.

**4.2 Parliamentary Budget Office (PBO)**

The Parliamentary Budget Office (PBO) explained the rationale for appropriating additional funds to the Department of Public Enterprises and the Department of Transport for the 2022/23 financial year. The PBO submitted that the 2022 national budget had revealed that Sanral’s debt guarantee exposure had increased by R11.7 billion to R49.1 billion by the end of the 2021/22 financial year, mainly due to accrued interest and revaluation of inflation-linked bonds. A total of R47 billion of Sanral’s debt would be shared between the Gauteng provincial government and the national government, with a 30 percent to 70 percent split, to unblock the impasse surrounding the Gauteng Freeway Improvement Project (GFIP). An amount of R23.7 billion of the debt would mature soon and would be paid by the national government; conditional on the implementation of a solution to phase 1 of the GFIP. The PBO further reported that, due to under-collection of e-tolls, government assistance had become a significant supplementary source of funding for the toll portfolio over the previous three financial years. In the 2021/22 financial year, Sanral had been given R3.85 billion in the form of a GFIP grant, up from the R 2.72 billion grant allocated in the 2020/21 financial year. The PBO reported that the Gauteng provincial government had resolved to set up task teams to look at sources of funding for their 30 percent share of the GFIP debt and to investigate how the entire e-toll infrastructure could be repurposed to deal with crime issues; and had indicated that it intended to stagger repayment of its 30 percent share of the GFIP debt over 20 years, in order to avoid pressure on the Province’s finances, delivery on social services and other obligations.

The PBO reported that Transnet’s operational and financial performance for the 2021/22 financial year had been below target. The main reasons were security problems, constraints on locomotive availability, and subdued economic trading conditions. The PBO further indicated that the volume of goods transported in South Africa had decreased by 20 percent between 2018/19 and 2021/2022; and that this cash injection would assist Transnet Freight Rail to address declining volumes and revenue and, with government support, to improve its revenue flows and liquidity position by improving its operational efficiency and leveraging its balance sheet.

The PBO indicated that Denel’s guarantee facilities and debt was at R3.4 billion in 2021/22, after R2.5 billion in revenue had lapsed following the cancellation of the Egyptian missile contract and the maturity of R1 billion debt. Denel had been allocated R3 billion in the 2022 main budget to cover capital and interest payments on guaranteed debt, reducing its debt to R290 million. Denel’s financial challenges had resulted in it struggling to pay salaries during the COVID-19 pandemic and failing to submit financial results within the required time frame, which had led to the Johannesburg Stock Exchange (JSE) suspending trading of its bonds earlier in 2022. This resulted in the entity being unable to sell more debt on the primary market and its bonds not being traded on the JSE's secondary market. The R3.4 billion allocated in the Bill would support recent progress made to stabilise the entity.

**4.3 Congress of South African Trade Unions (COSATU)**

COSATU welcomed the allocation of R23.7 billion to reduce the Gauteng E-Tolls debt; indicating that a final solution was now needed to correct this policy mistake for good. COSATU expressed the hope that government had heard from struggling commuters who could not afford to continuously bail out the State. While COSATU welcomed the allocation of an additional R2.9 billion to repair Transnet infrastructure and locomotives; it indicated that more needed to be done by law enforcement to protect the country’s railway infrastructure. COSATU expressed extreme disappointment over the failure to provide similar support to Metrorail, where many lines had still not been returned to service two years after the 2020 lockdown. COSATU appreciated the allocation of R3.6 billion to Denel, especially for those workers who had not been receiving their salaries; but indicated that government needed to provide assurances that the money owed to the Denel workers would now be paid. COSATU found it shameful that workers had not been paid for more than 18 months and that unions had been forced to take Denel to court repeatedly. COSATU indicated that government should share the envisaged turnaround plan for the entity and that this plan needed to include saving its employees’ jobs.

**4.4 Organisation Undoing Tax Abuse (OUTA)**

The Organisation Undoing Tax Abuse (OUTA) submitted that, with regard to the Gauteng Freeway Improvement Project (GFIP), it would have preferred that government had not embarked on the costly exercise of implementing e-toll infrastructure in the first place, or had paid exorbitant amounts to a collection agency. Notwithstanding, OUTA welcomed the resolution of the matter and the acknowledgement by government that Gauteng commuter roads (social infrastructure) should be funded by the fiscus. OUTA submitted that it was important that there be improved transparency and clarity around the finances of Sanral before the Bill was finalised in Parliament. OUTA noted that, in 2012 court papers, the cost of the GFIP had been indicated as R20 billion. Sanral had borrowed R20 billion to fund this. Since 2011/12, national government had authorised government grants totalling R30 billion to Sanral, explicitly for the GFIP (including the R3.740 billion transferred in July 2022, but excluding the R23.7 billion proposed in the Bill); and Sanral had also raised about R6.2 billion in e-toll revenue. However, the GFIP debt remained inexplicably high. OUTA further noted that, of the R25.6 billion in GFIP grants to the entity from 2011/12 to 2021/22, Sanral had recorded receipt of only R22.4 billion, leaving a discrepancy of R3.2 billion. To this end, OUTA submitted that an independent investigation was required on the entity’s actual expenditure on the GFIP project. Such an investigation should ascertain -

* How much was spent on the various road construction packages of GFIP;
* How much was spent on the e-toll infrastructure;
* Why the costs escalated significantly from approved budgets in 2012; and
* How National Treasury’s GFIP allocations to Sanral were applied between 2012 and 2022.

OUTA noted that one of the conditions attached to the Sanral allocation, was that the Department of Transport should submit a draft Road Funding Policy to National Treasury by 31 January 2023. OUTA submitted that this policy should be published for public comment; the public must be given sufficient time to respond; and public comments must be taken into account. OUTA requested the Standing and Select Committees on Appropriations to request the Portfolio Committee on Transport to encourage the Department of Transport to make the process of drafting this policy as transparent as possible, to ensure public buy-in on this crucial matter.

OUTA expressed concern around the ongoing failure of SOEs as well as government’s continued failure to reassess this sector. It submitted that Eskom in particular would be a significant drain on the fiscus for years to come; making reference to the 2022 MTBPS which stated that financial support for Eskom had amounted to R224.6 billion between 2019/20 and 2025/26. This was likely to increase further when National Treasury took on a significant amount of Eskom’s debt. While OUTA agreed that Eskom needed support, it found it distressing to see funds, which should be used for improving quality of life, having to be used to clean up the results of state capture. OUTA emphasised that government had repeatedly promised to overhaul the SOE sector, but had done nothing. OUTA submitted that it was time for the unnecessary SOEs to be shut down or amalgamated, and for much more stringent controls over them. OUTA was of the view that it was pointless for government to continue to pour massive sums into Eskom, while failing to address the key problem of the debt owed to the entity by customers, particularly delinquent municipalities.

**4.5 Public Service Accountability Monitor (PSAM)**

The Public Service Accountability Monitor (PSAM) was concerned that bail-outs to state-owned entities (SOEs) continued despite very little evidence that these entities would become self-sufficient, or that conditions attached to bail-outs had any impact; as it continued to pose a threat to public finances; and made the following recommendations:

* The Committees should insist that the conditions applied to bail-outs to SOEs (including those in the past few years) be made available to the public, together with a clear plan for weaning SOEs off of state interventions.
* The Committees should urge that the National Treasury, the Department of Public Enterprises and other departments ensure transparency and timely reporting in the operations of SOEs who receive public funds.
* The Committees should request national departments responsible for SOEs to facilitate the opening of annual general meetings (AGMs) of SOEs to the public, and to make information on remuneration and incentives of board members and executives public.

**5. Observations and findings**

The Select Committee on Appropriations, having considered the inputs from the above stakeholders on the *Special Appropriation Bill* [B24 - 2022], made the following findings:

* 1. The Committee notes that the Bill proposes additional funding allocations amounting to R23.7 billion for the South African National Roads Agency (Sanral) for repayment of its maturing debt and debt-related obligations; R3.4 billion for Denel SOE Limited (Denel) for the implementation of its turnaround plan; and R2.9 billion for Transnet SOE Limited (Transnet) for the acceleration of the repair and maintenance of locomotives.
	2. The Committee notes that these additional funds are accompanied by pre- and post-conditions and further notes that National Treasury will only disburse these funds once the Minister is satisfied that the required conditions have been met by the aforementioned entities. However, the Committee remains concerned that there seem to be no clearly outlined penalties within the pre- and post-conditions to deal with non-compliance.
	3. The Committee remains concerned over the fact that government is being forced to pay for the poor decisions made by Sanral, leading to it requiring R9 billion immediately to maintain its going concern status. Furthermore, the Committee is concerned over the fact that there are no clear plans for how Gauteng would fund its 30 percent share of the Sanral debt; and what the consequences will be if it fails to raise the money.
	4. The Committee notes that Denel’s financial challenges have resulted in it struggling to pay salaries for 18 months during the COVID-19 pandemic and failing to submit financial results within the required time frame; leading to the Johannesburg Stock Exchange (JSE) suspending trading of its bonds earlier in 2022 and the entity being unable to sell more debt on the primary market and its bonds not being traded on the JSE's secondary market.
	5. The Committee agrees with the Financial and Fiscal Commission (FFC) that the challenges of the state-owned entities (SOEs) have resulted in poor service delivery, poor financial management, less growth, massive unemployment, corruption and low business confidence and further compromised government’s social programmes to alleviate poverty, unemployment and inequality.
	6. The Committee agrees with COSATU that more needs to be done by law enforcement to protect the country’s railway infrastructure, given the scourge of cable theft and many other criminal activities taking place in that space.
	7. The Committee agrees with OUTA that the Road Funding Policy to be drafted by the Department of Transport should be published for public comment; the public must be given sufficient time to respond; and public comments must be taken into account to ensure public buy-in on this matter.
	8. The Committee shares the concern of the Public Service Accountability Monitor (PSAM) that bail-outs to SOEs continue despite very little evidence that these entities will become self-sufficient, or that conditions attached to bail-outs have any impact; as their situation continues to pose a threat to public finances.
	9. The Committee agrees with the Parliamentary Budget Office (PBO) that the continued bailing out of SOEs constitutes a sovereign credit risk, and is further concerned over the need to find alternative funding models to finance Sanral’s debt, seeing that the user-pays principle seems to have been rejected by citizens.
1. **Recommendations**

The Select Committee on Appropriations, having been briefed and engaged with the above stakeholders on the *Special Appropriation Bill* [B24 - 2022], recommends as follows:

* 1. The Minister of Finance should gazette the proposed additional funding allocations, with clear conditions, as indicated in the *Special Appropriation Bill* [B24 – 2022], amounting to R23.7 billion for the South African National Roads Agency (Sanral) for repayment of its maturing debt and debt-related obligations, R3.4 billion for Denel SOE Limited (Denel) for the implementation of its turnaround plan, and R2.9 billion for Transnet SOE Limited (Transnet) for the acceleration of the repair and maintenance of locomotives.
	2. The Minister of Finance, together with the Minister of Public Enterprises and the Minister of Transport, should ensure that the pre-and post-conditions prescribed for the bail-outs are fully complied with, and that clear consequences are explicitly outlined as part of such conditions; so that appropriate action will be taken against the transgressor in the case of non-compliance. Furthermore, the Committee is of the view that, in order to encourage transparency in public finances, any bail-out must have conditions that are publicly available for continuous accountability and oversight.
	3. Whilst the Committee welcomes the allocation of R3.4 billion to Denel to deal with the turnaround strategy as well as the non-payment of workers for 18 months; the Committee recommends that the Minister of Public Enterprises, together with the Denel Board, take concrete steps to ensure that the process of paying outstanding salaries for Denel employees is fast-tracked immediately.
	4. The Minister of Finance, together with the Minister of Public Enterprises and the Minister of Transport, should ensure that all additional funds earmarked for their respective departments are spent according to the approved plans and within the ambit of the *Special Appropriation Bill* [B24 – 2022], and ensure that clear internal controls and financial management systems are put in place to prevent poor, wasteful and fruitless expenditure, and that consequence management is enforced. Parliament will continue to monitor the implementation and expenditure of such allocations through regular in-year monitoring by sector committees and the section 32 reports required by the Public Finance Management Act No.1 of 1999.
	5. The Department of Transport should expedite the process of developing a draft Road Funding Policy, which should then be promptly published for public comment. The public must be given sufficient time to respond and public comments must be taken into account to ensure public buy-in on this matter.
	6. Whilst recognising the need for government to intervene where there is market failure, the Committee believes that the provision of continuous financial support to state-owned entities (SOEs) directly from the fiscus will continue to compromise social programmes for the poor and other developmental obligations. As part of the overall SOE turnaround strategy, the Committee is calling for concrete steps to be taken by the Department of Public Enterprises, the National Treasury, the Department of Transport and other departments with ailing public entities to strengthen oversight, leadership capacity/boards of directors and financial management capacity, and to ensure the appointment of suitably qualified and experienced officials to turn around the balance sheets of these entities within a reasonable period of time after the adoption of this Report by the House.
	7. The Committee does not encourage the tabling of special appropriation bills in Parliament, unless they are absolutely necessary and dictated by exceptional circumstances; as it may signal budgeting challenges related to fiscal uncertainty. When these bills are introduced, it needs to be done timeously so that Parliament has sufficient time to engage with the public and process them accordingly.

**7. Conclusion**

After having complied with section 12 of the Money Bills and Related Matters Act No 9 of 2009 (as amended), the Select Committee on Appropriations, having considered the *Special Appropriation Bill* [B24 - 2022], referred to it for concurrence, and classified by the Joint Tagging Mechanism as a section 77 Bill, reports that it has agreed to the Bill, without proposed amendments.

The Democratic Alliance (DA), the Economic Freedom Fighters (EFF) and the Freedom Front Plus (FF+) reserved their positions on the Report.

Report to be considered.