**Report of the Standing Committee on Finance on the Municipal Fiscal Powers and Functions Amendment Bill [B21 - 2022] (National Assembly- section 75), dated 17 May 2023**

The Standing Committee on Finance, having considered the Municipal Fiscal Powers and Functions Amendment Bill [B21 - 2022] (National Assembly- section 75) referred to it, reports the Bill as follows:

1. **INTRODUCTION AND BACKGROUND**
	1. The Municipal Fiscal Powers and Functions Amendment Bill (MFPFAB) was tabled in Parliament by the Minister of Finance on 22 September 2022. MFPFAB is an ordinary (section 75 of the Constitution) Bill dealing with the regulation of the power of municipalities to levy development charges and related issues.
	2. Among other issues, this Bill seeks to empower the Minister of Finance to make regulations for the effective implementation of matters relating to development charges and to amend the Spatial Planning and Land Use Management Act (SPLUMA), 2013.
2. **PUBLIC PARTICIPATION**
	1. SCOF was briefed on this Bill on 15 March 2023 and made a call for submissions thereafter. On 22 March 2023, the Committee held public hearings which were responded to on 09 May 2023.
	2. On the date of public hearings, the Committee noted that it had received three written submissions, but no stakeholder had requested to make an oral presentation. The submissions were received from Ms. H Vorster, Dr Kenneth Kaunda District Municipality, and the South African Local Government Association (SALGA).
	3. In developing these amendments, the National Treasury reported to the Committee that it consulted municipalities, the Financial and Fiscal Commission, the South African Local Government Association, the South African Land Owners Association, the Metropolitan Municipalities and Secondary Cities, the National Department of Rural Development and Land Reform, the National Department of Human Settlement, the National Department of Environment, Forestry and Fisheries, the National Department of Transport, and the South African National Roads Agency SOC LTD.
	4. The National Treasury further reported that it received several written comments from these stakeholders (all spheres of government, property owners, non-government institutions and the public). It said that after analysing these comments, the Bill was refined, where necessary, before it was tabled in Parliament. The National Treasury also held a feedback session with stakeholders to inform them of the outcome of the public consultation process.
3. **OVERVIEW OF THE PROPOSALS IN THE MFPFAB**
	1. MFPFAB proposes amendments to the Municipal Fiscal Powers and Functions Act, Act 12 of 2007 (“the Act”), to among other things provide a regime for municipalities to levy development charges.
	2. The Bill defines key concepts such as external engineering services, bulk engineering services, link engineering services, internal engineering services and rebate.
	3. The Bill consists of 8 main clauses. Clause 4 of the Bill proposes the insertion of a new chapter, Chapter 3A (with 12 clauses, Clause 9A to 9L) which deals with development charges.
	4. 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.
	5. 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.
	6. Clause 3 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.
	7. Clause 4 proposes the insertion of Chapter 3A, as discussed in 3.3. above.
		1. Clause 9A provides for a power for municipalities to levy development charges and establishes the basis on which they are calculated.
		2. Clause 9B requires each municipality to approve a policy on development charges and specifies the minimum contents of these policies.
		3. Clause 9C requires a public participation process before a municipality adopts a policy on development charges.
		4. Clause 9D allows a municipality to adopt and publish by-laws to give effect to the implementation of its development charges.
		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.
		6. Clause 9F provides for engineering services agreements to regulate the terms and conditions of the installation of engineering services.
		7. Clause 9G permits a municipality to set off the cost of infrastructure installed by an applicant against a development charge.
		8. Clause 9H deals with the consequences of a municipality not providing infrastructure for which a developer has paid a development charge.
		9. Clause 9I provides for instances where bulk and link engineering services are part of internal engineering services.
		10. Clause 9J provides for a mechanism to resolve a dispute of a person whose rights are affected by a decision regarding development charges.
		11. Clause 9K provides for the delegation of powers conferred upon a municipality.
		12. Clause 9L provides for financial misconduct where there is, among other things, a contravention of Chapter 3A.
	8. 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.
	9. Clause 6 provides for a Schedule, to amend the SPLUMA, 2013 and 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.
	10. Clause 7 proposes the substitution of the long title of the Act to, among other things, refer to development charges.
	11. Clause 8 provides for the short title of the Act and its commencement.
4. **KEY SUBMISSIONS AND RESPONSES BY NATIONAL TREASURY**
	1. SALGA raised concerns regarding definitions. It proposed alignment of the definitions between SPLUMA and the MFPFAB, which NT agreed to and effected in the Bill. Section 1 of SPLUMA was amended by providing additional definitions and these amendments were consulted on with the Department of Land Reform and Rural Development (DALRRD) and were supported.
	2. Additional definitions were related to the bulk engineering services and the linked engineering services, and these definitions were portions of what constituted external engineering service. Other definitions were aligned to those in section 1 of the SPLUMA, such as external engineering service, internal engineering service, and engineering service applicant.
	3. The term ‘land-owner’ was replaced with the term ‘applicant’ and the definition was similar to the one contained in SPLUMA. The Bill no longer referred to 'municipal engineering service,' but to 'engineering service,' and the definition was like the one in SPLUMA.
	4. There were questions raised on whether the Bill proposed the levying of municipal surcharges or not. NT clarified that the Bill did not deal with municipal surcharges but the levying of development charges. It further clarified that municipal surcharges may be levied on fees for municipal services in general, and it had been defined in the principal Act as a charge more than 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.
	5. NT further explained that a surcharge had no bearing on the development charges, neither did the development charges have any bearing on the municipal surcharges. NT further clarified that municipal councils may levy surcharges for any of the municipal services outlined in Schedules 4 and 5, Part B of the Constitution. NT further stated that apart from amending section 1 of the Act, the Bill had inserted Chapter 3A, which dealt specifically with development charges. It said that the rest of the Chapters in the principal Act remained unchanged, adding that development charges could be utilised only for providing infrastructure, whilst surcharges may be utilised at the discretion of the municipality.
	6. On providing clarity on the status of development charges (whether it is a levy, tax or charge in terms of the Municipal Systems Act as charges and tariffs, or a surcharge), NT responded that the Bill made it clear that a development charge meant a charge levied by a municipality in terms of section 9A(1)(a) and contemplated in section 49 of the SPLUMA which must:
		1. Contribute towards the cost of the capital infrastructure assets required to meet the increased demand for existing and planned external engineering services;
		2. Contribute towards the cost of open parks and spaces if the land development application provides for the use of land for residential purposes; or
		3. With the approval of the Minister, contribute towards the capital infrastructure assets required to meet the increased demand for other engineering services not prescribed in terms of the SPLUMA.
	7. NT clarified further that municipal surcharges and taxes had been clearly defined in the original Act (Chapter 2 and 3), including procedures for their application, and they had no bearing on the development charges. NT further stated that to avoid confusion, the MFPFA Bill in clause 3(2) clearly indicates that Chapters 2 and 3 do not apply to development charges. As such, the Bill deals with the application and regulation of development charges, and nothing else.
	8. NT agreed with submissions that development charges be recognised as non-trading revenue in the statement of financial performance. It further clarified that municipalities would account and report on development charges in accordance with existing legislation such as the Municipal Finance Management Act. In addition, National Treasury would issue circulars/notices to guide municipalities on how they should account and report on development charges.
	9. Ms Forster rejected the Amendment Bill, arguing that municipalities were struggling financially, not due to a lack of extra levies, but due to mismanagement and corruption. She argued that this levy would add to the financial burden already loaded onto municipal customers, and the majority of South Africans would not be able to afford it. NT did not agree with the concerns raised by Ms Forster, given that development charges were not a new source of revenue for municipalities, as some municipalities were already levying this charge. NT clarified that the general concept of a development charge was that the urban growth and expansion of new land use development created the need for additional infrastructure services. These services, which were an essential part of land use development, were a direct cost generated by that development, and should therefore be paid for by the applicant.
	10. NT further clarified that development charges are based on the ‘benefit principle’ and were therefore payable by individual applicants to fund the provision of infrastructure meant specifically to service their proposed land developments, rather than it being subsidised by the rest of the ratepayers in the municipality through increased rates and tariffs. NT assured that once enacted the Bill would promote accountability and the predictability that current residents, especially the poor, were not required to subsidise the cost of commercially viable developments.
5. **COMMITTEE OBSERVATIONS**
	1. The Committee welcomes the amendments proposed in this Bill which seek to establish clear, fair, and consistent regime for municipalities to recover development charges for all new land development projects that require statutory approvals through the municipal land use planning system.
	2. The Committee notes that the proposals in the Bill seek to bring about a more standardized, equitable and sustainable framework for financing municipal infrastructure based on the benefit principle, thus enabling applicants to accurately estimate their development cost liabilities and ensure that municipalities can provide the required infrastructure timeously.
	3. The Committee notes that the benefits of this Bill include the uniformity across municipalities on the application of development charges, which will eliminate any unfair competition or treatment of applicants within and between municipalities. The Committee further notes that development charges are not new as municipalities already charge these. However, the Bill seeks to bring the much-needed framework that will ensure coordination and improve the municipal fiscal framework.
	4. The Committee notes and welcomes the written submissions from stakeholders, and the consultative processes by NT which ensured that when the Bill was presented, there were not too many contentious issues. The Committee particularly sought to consult with SALGA, as an autonomous association of all the country’s municipalities, and was pleased that it participated in the consultation processes of NT and made written submissions to the Committee which were all responded to by NT.
	5. The Committee is satisfied that all the issues raised during the public participation process were responded to in detail by NT, with some improvements made in the final Bill, particularly around the issues of definitions between the Bill and SPLUMA.
	6. The Committee notes that the comments made by the Dr Kenneth Kaunda Municipality contained issues of equitable share, which were not relevant to the Bill.
6. **CONCLUSION**
	1. The Committee agrees with the amendments proposed in the Bill as reflected in the A list of the Bill.
	2. The Committee reports the Bill [B21B-2022].

Report to be considered.