

MUNICIPAL FISCAL POWERS AND FUNCTIONS AMENDMENT BILL

SELECT COMMITTEE ON FINANCE BRIEFING

PRESENTED BY:

NAME:
SURNAME:

Title: IGR Policy and
Planning Division

Date: 05 September
2023



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



INTRODUCTION

- Infrastructure investment is integral to overcoming poverty and inequality, particularly in the face of rapidly rising urbanisation in South Africa. However, South Africa has a ***history of underinvestment***, both in maintaining existing infrastructure and building new infrastructure to meet the demands of urbanisation and rapid demand for services. This ***has affected the availability and reliability of municipal services*** and is often cited as a constraint to economic activity and additional private investment. Land development projects are often delayed by the unavailability or late delivery of bulk infrastructure.
- Given that the fiscal environment is constrained and the national economy is stagnating, ***municipalities need to mobilise their own revenue resources to finance the rehabilitation of existing infrastructure and the development of new infrastructure*** to ensure that municipal services are reliable and available to sustain economic activities and boost confidence that underpins future private investment capable of creating jobs and increasing municipal revenue base.

THE LOCAL GOVERNMENT FISCAL FRAMEWORK

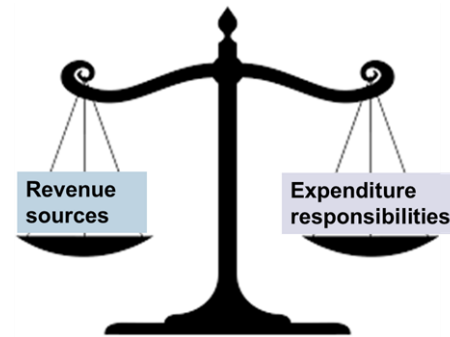
The Local Government Fiscal Framework

- The fiscal framework refers to all the revenues available to municipalities as well as all of their expenditure responsibilities

Main revenue sources:

- Municipal property rates
- Service charges
 - Electricity
 - Water & sanitation
 - Refuse removal
- Sharing of the General Fuel Levy
- Transfers
 - Equitable share
 - Conditional grants

If these balance a municipality should be "viable"

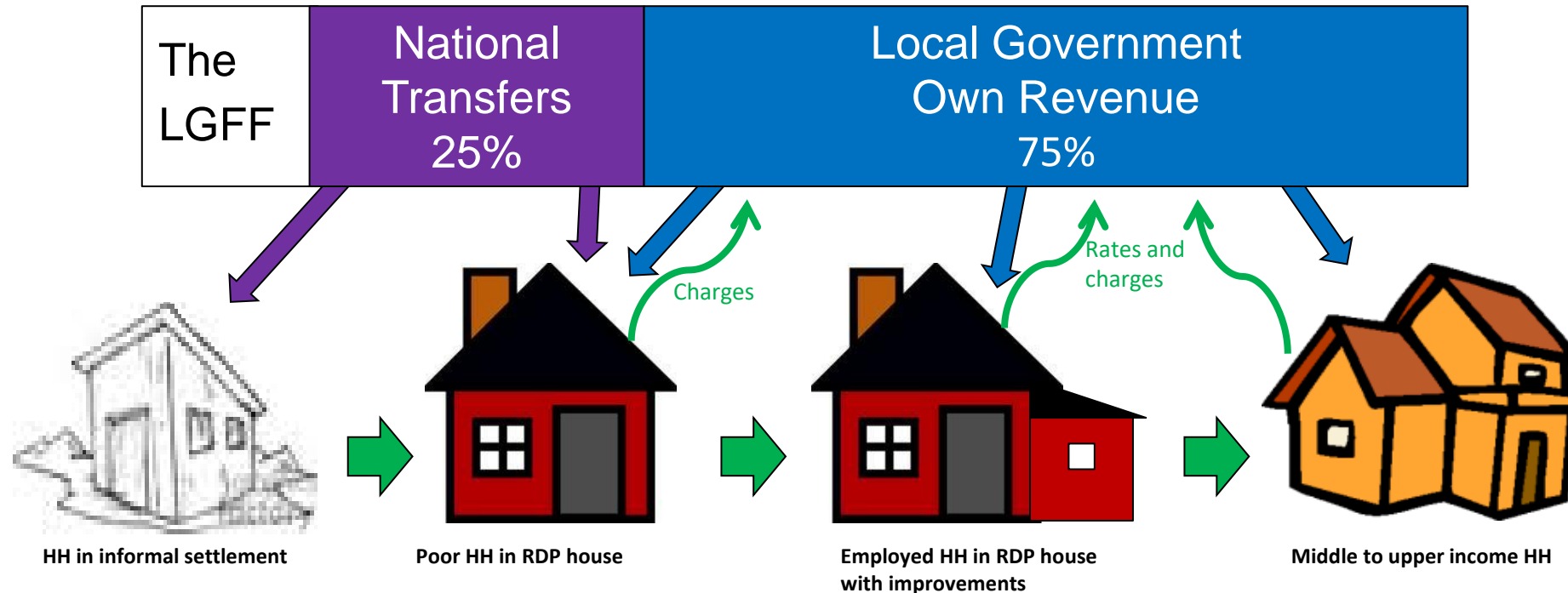


Do revenues balance with expenditures?

Main expenditure responsibilities:

- Administration
- Basic services
 - Electricity
 - Water & sanitation
 - Refuse removal
- Municipal roads
- Local development
- Community services
 - Parks, sports and recreation etc.

LG Fiscal framework includes transfers and own revenues



- Local government is ***funded by transfers and own-revenues***
- Main sources of own revenue are **property rates** and **service charges**
- Transfers are designed to fund services for poor HHs
- Non-poor households contribute to municipal revenues
- Transfers are never intended to fully fund municipalities

Funding Infrastructure in Municipalities

- **Conditional grants** are meant to fund social infrastructure
- Options available to fund economic infrastructure:
 - **Own revenue:** (Service Charges & surcharges, Property Rates & levies, Internally generated funds)
 - **Borrowing**
 - **Land-based financing:** (Tax Incremental Financing, Development Charges)
- **Property taxes and user fees** cover the cost of the operation, maintenance and eventual replacement of infrastructure services.
- **Development charges** cover the cost associated with the installation of new infrastructure and upgrading existing infrastructure. Where infrastructure exists and has spare capacity, and it's still being paid for, DCs are used to repay borrowed funds.

PROBLEM STATEMENT

- Development charges are one of the instruments that municipalities can use to finance the provision of infrastructure. Development charges ***are a once-off charge levied by a municipality on the applicant as a condition for approving land development applications.*** They are imposed to cover the costs incurred by the municipality when installing new infrastructure or upgrading existing infrastructure.
- The ***general concept of a development charge is that the urban growth and expansion of new land use development creates the need for additional infrastructure services.*** These services, which are an essential part of land use development, are a direct cost generated by that development and should therefore be paid for by the applicant. This will avoid the financial burden being imposed on municipalities or existing communities.

PROBLEM STATEMENT

- DCs *are an existing source of municipal revenue, currently regulated through various pieces of legislation*, including Provincial Ordinances, the Municipal Systems Act, the Municipal Finance Management Act, the Municipal Fiscal Powers and Functions Act and the Spatial Land Use and Management Act (“SPLUMA”). However, none of these provides clarity on how development charges should be levied or calculated.
- However, *none of these provide clarity on how development charges should be levied*. This has created legal ambiguity and increased the scope for litigation. Due to these legal challenges, municipalities have not fully utilised DCs despite their potential scope of providing an alternative option for financing municipal infrastructure.

PROBLEM STATEMENT

- An analysis undertaken by National Treasury determined in 2015 that metropolitan municipalities alone are under-investing in infrastructure networks by approximately R15 billion per annum. DCs could therefore assist municipalities to address this funding gap in the development of municipal infrastructure that will unlock growth. ***A study undertaken by NT suggests that municipalities fail to recover in the region of R20 billion per annum that could otherwise be raised as DCs***
- The ***ineffectiveness in the utilisation of development charges as a source to finance municipal infrastructure has profound negative economic impacts*** such as under-investment in municipal infrastructure and unfair charging of existing residents for the expansion of infrastructure networks while providing a windfall benefit to applicants who don't pay.
- To address the above challenges National Treasury in collaboration with relevant stakeholders ***initiated a process of reviewing and reforming the framework for municipal development charges*** in order for municipalities to effectively use development charges to fund infrastructure investments.

OBJECTIVES & KEY REFORMS INTRODUCED IN THE BILL

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The Bill seeks to:

- establish an unambiguous, fair and consistent basis for municipalities to recover development charges for all new land development projects that require statutory approvals through the municipal land use planning system;
- bring about a more standardized, equitable and sustainable framework for financing municipal infrastructure, based on the benefit principle; and
- enable applicants to accurately estimate their development charges liabilities and ensure that municipalities are able to provide the required infrastructure timeously.

Key Reforms:

- The Bill, once enacted, will—
 - ensure accountability and transparency in the establishment, collection, and expenditure of development charges
 - provide for a uniform regulatory framework to ensure that at least the basis for, principles and method of calculation will be the same across municipalities.
 - create legal certainty for all parties on how development charges are imposed and regulated.
 - promote accountability and the predictability that current residents, especially the poor, are not required to subsidise the cost of commercially viable developments. Therefore, the incidence of the cost is more accurately and equitably assigned to those who directly benefit from the infrastructure, rather than being spread amongst all ratepayers.

BENEFITS OF DEVELOPMENT CHARGES

Benefits to municipalities:

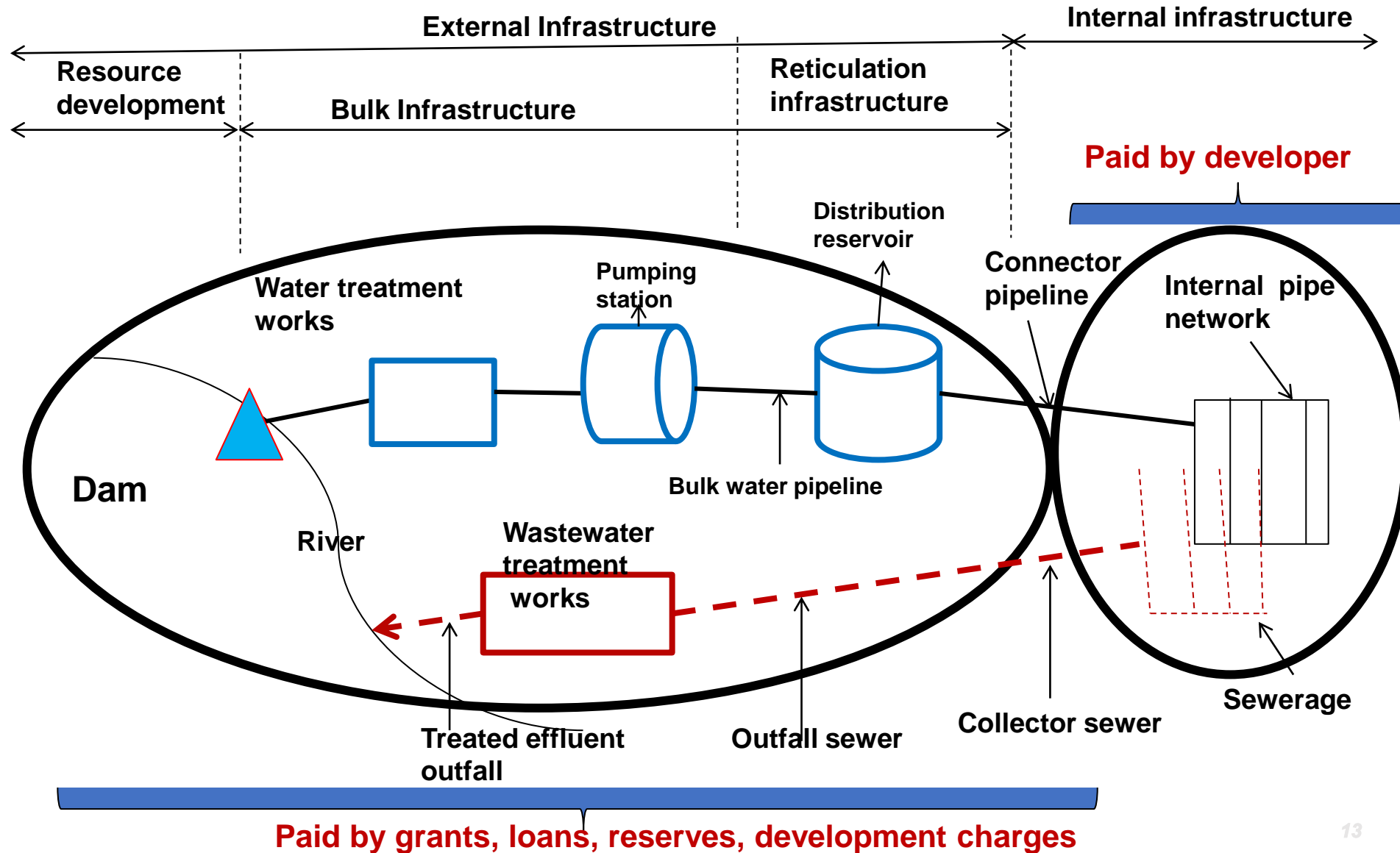
- An effective system of DCs will enhance revenue streams for financing strategic municipal infrastructure which will enable municipalities to provide infrastructure in a timely and sufficient manner thereby supporting economic development.
- Development charges provide a pledgeable revenue stream to support borrowing for infrastructure.
- Uniformity across municipalities on the application of DCs which will eliminate unfair competition/and or treatment of applicants both within and between municipal jurisdictions.
- A clear legal framework will minimise litigation in the administration of DCs.

Benefits for applicants:

The DCs legislative framework will ensure that DCs are managed in a manner that promotes:

- *Predictability*: applicants will be able to accurately estimate their DC liabilities and hold municipalities to account for the timely delivery of required infrastructure.
- *Fairness*: applicants pay only for the infrastructure investments which they benefit from.
- *Transparency*: DCs ensure equitable and transparent allocation of the costs of the infrastructure installed and its quality.

Development charges components/principle (example of water and waste water treatment works)



STAKEHOLDERS CONSULTED

- Department of Agriculture, Land Reform and Rural Development
- South African Local Government Association
- Department of Transport
- South African Property Owners Association
- Department of Cooperative Governance
- Financial and Fiscal Commission
- Department of Forestry, Fisheries and the Environment
- Department of Human Settlements
- Municipalities
- General public

COMMENTS RECEIVED FROM CONSULTATION PROCESS

- Written comments were received from various stakeholders (all spheres of government, property owners, non-government institutions and the general public)
- Comments were analysed, and where necessary the Bill has been refined
- National Treasury held a feedback session with stakeholders to inform them of the outcome of the public consultation process

KEY CONCEPTS IN THE BILL

DEFINITIONS OF CONCEPTS IN THE BILL

- **External engineering services-** means engineering service situated outside the boundaries of a land area and which is necessary to serve the use and development of the land area
- **Bulk engineering services-**means capital infrastructure assets associated with that portion of an external engineering service which is intended to ensure delivery of municipal engineering services for the benefit of multiple users or the community as a whole, whether existing or to be provided as a result of development in terms of a municipal spatial development framework.
- **Link engineering services-**means the capital infrastructure assets associated with that portion of an external engineering service, which links an internal engineering service to the applicable bulk engineering services.
- **Internal engineering services-** means an engineering service within the boundaries of a land area which is necessary for the use and development of the land area and which is to be owned and operated by the municipality or service provider.
- **Rebate-** means a reduction granted by a municipality in terms of section 9E on the amount of development charge payable for a category of applicants or a category of land development as per the criteria determined in its policy on development charges.

SUMMARY OF THE PROVISIONS IN THE MFPFA BILL

Power to levy development charge (Clause 9A)

- A municipality ***may levy a development charge*** in respect of a land development application submitted to it in terms of section 33(1) read with section 45 of the Spatial Planning and Land Use Management Act.
- If a municipality decides to levy development charges, ***its municipal council must adopt a resolution*** for the municipality to levy the development charges, and thereafter the municipality ***must comply with this Act.***

Adoption and contents of a policy on development charges (Clause 9B)

- A municipal council must adopt a policy consistent with this Act on the levying of development charges in the municipality.
- ❑ A development charges policy must, among others-
 - ✓ treat applicants liable for development charges ***equitably and fairly***
 - ✓ ensure that there is ***no duplication of costs*** in the manner in which development charges are calculated
 - ✓ set out the ***methodology for calculation*** of a unit cost per engineering service

Community participation (Clause 9C)

- Before a municipality adopts a policy on development charges, the municipality must follow a process of community participation that is consistent with Chapter 4 of the Municipal Systems Act.
 - ❑ The municipality must—
 - ✓ display the draft policy on development charges *for a period of at least 30 days* in the manner provided for in section 21A of the Municipal Systems Act ; and
 - ✓ *advertise in the media*, in the manner provided for in section 21 of the Municipal Systems Act.

By-laws to give effect to policy on development charges (Clause 9D)

- A municipality must adopt and publish by-laws, in terms of sections 12 and 13 of the Municipal Systems Act, to give effect to the implementation of its policy on development charges.
- A municipality's by-laws on development charges ***may be integrated into other by-laws relating to municipal planning or a related area of municipal legislative competence.***

Rebate and Exemption (Clause 9E)

- If a municipality has opted to levy development charges in terms of section 9A(1), it may only—
 - ✓ grant a rebate for a category of applicants or a category of land developments ***through reducing the development charge payable*** in respect thereof; or
 - ✓ exempt a category of applicants or a category of land developments from paying development charges, ***where it has set out the criteria for rebate or exemption in its policy on development charges.***
- If a rebate or exemption is granted in terms of subsection (1), the municipality ***must set out the reasons and identify the alternative funding source for the required bulk engineering services,*** to the value of the rebate or the exemption.

Engineering services agreements (Clause 9F)

- An engineering services agreement must—
 - ✓ be concluded in respect of any approved land development which necessitates the installation of internal engineering services or external engineering services, whether by the municipality or an applicant.
 - ☐ include provisions regulating at least the following matters:
 - ✓ ***The nature and extent of the internal engineering services or external engineering services*** that must be installed by the municipality or an applicant;
 - ✓ ***the timing of commencement and completion of the internal engineering services or external engineering services*** that must be installed by the municipality or an applicant
 - ✓ ***the amount of an applicant's costs of installation, or the process for determining that amount,*** where an applicant is to install link engineering services or bulk engineering services, including the process, after installation, for making any adjustments to that amount;
 - ✓ dispute resolution

Installation of external engineering services by applicant (Clause 9G)

- A municipality which levies development charges may agree in writing with an applicant that the applicant installs all or part of the bulk engineering services required for an approved land development, and ***the municipality may off-set the costs of installation of such bulk engineering services against the associated development charge.***
- A municipality may require that bulk engineering services are installed ***to accommodate a greater capacity than that which is required for the land development,*** in order to support future development in the area of the land development as determined by the municipality.
- If the cost of installing bulk engineering services by an applicant exceeds the development charge for the land development, the municipality ***must reimburse or off-set the amount in excess of the development charge,*** in accordance with an agreed payment schedule, ***by a period not exceeding three years from the date of completion of the installation by an applicant,*** unless an applicant waives his or her right to reimbursement of that amount or any part thereof.

Non-installation of bulk engineering services by municipality (Clause 9H)

- If a municipality fails to complete the installation of bulk engineering services within a period of 12 months from the completion date as stipulated in an engineering services agreement, the municipality must, ***reimburse the applicant that portion of the development charge which is attributable to the failure, with interest charged at the applicable rate***, as determined in terms of section 80(1)(a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), calculated from the date of completion as stipulated in the engineering services agreement.
- The municipality and an applicant ***may agree to extend the time period for completion of the bulk services*** by the municipality.

Bulk and link engineering services as part of internal engineering services (Clause 9I)

- Where a bulk or link engineering service is intended to service subsequent developments and ***traverse the internal boundaries of the land development by an applicant***, both services ***must be regarded as external engineering services***.

Dispute resolution (Clause 9J)

- A person whose rights are affected by a decision regarding development charges taken by a municipality may appeal against that decision in accordance with the ***mechanism provided for in section 62 of the Municipal Systems Act.***
- A dispute arising in relation to any matter regulated by an engineering services agreement must be resolved in accordance with the ***dispute resolution mechanism provided for in that agreement.***

Delegations (Clause 9K)

- Except to the extent provided otherwise in this Chapter or in any other legislation, a power or duty conferred upon a municipality in terms of this Chapter, ***other than the power of a municipal council to adopt a development charges policy and by-law***, may be delegated to an official of the relevant municipality.

Financial misconduct (Clause 9L)

- Section 171 of the Municipal Finance Management Act applies with the necessary changes required by the context, where an official of a municipality wilfully or negligently contravenes any provision of this Act.

WHAT SHOULD MUNICIPALITIES DO TO PREPARE FOR THE PASSING OF THE LEGISLATION?

- If a municipality decides to levy development charges, its municipal council must adopt a resolution for the municipality to levy the development charges, and thereafter the municipality must comply with the Bill, once enacted.
- A municipal council must adopt a policy consistent with this Act on the levying of development charges in the municipality.
- A municipality must adopt and publish by-laws, in terms of sections 12 and 13 of the Municipal Systems Act, to give effect to the implementation of its policy on development charges.
- A municipality's by-laws on development charges may be integrated into other by-laws relating to municipal planning or a related area of municipal legislative competence.
- A municipality which levies development charges in terms of a pre-existing policy or by-law, as at the date of commencement of the Act, must ensure that it complies with the Act within 36 months after the date of commencement of this Act.

CAPACITATION AND SUPPORT TO MUNICIPALITIES

- To ensure successful implementation of the development charges, municipalities will be equipped with the necessary tools and skills.
- A service provider to undertake capacity assessment of different categories of municipalities to implement development charges has been appointed.
- Minister of Finance is to make regulations regarding development charges, and NT will develop implementation guidelines including a DC calculator, pro-forma DC policy, by-law & Engineering Services Agreement.

PROPOSED TECHNICAL CHANGES TO BILL

Provisions in the Bill	Proposed technical refinements to provisions in the Bill	Reasons for the proposed technical refinements
<p>1. Development Charges definition (clause 1)</p> <p>‘development charge’ means a charge levied by a municipality in terms of section 9A(1)(a), and contemplated in section 49 of the Spatial Planning and Land Use Management Act, which must—</p> <p>(a) contribute towards the cost of capital infrastructure assets required to meet increased demand for existing and planned external engineering services;</p> <p>(b) contribute towards the cost of <i>open parks and spaces</i> if the land development application provides for the use of land for residential purposes; or</p> <p>(c) with the approval of the Minister, contribute towards capital infrastructure assets required to meet increased demand for <i>other engineering services</i> not prescribed in terms of the Spatial Planning and Land Use Management Act;</p>	<p>‘development charges’ means a charge levied by a municipality in terms of section 9A(1)(a), and contemplated in section 49 of the Spatial Planning and Land Use Management Act, which must contribute towards—</p> <p>(a) the cost of capital infrastructure assets required to meet increased demand for existing and planned external engineering services; <u>or</u></p> <p>(b) [Contribute towards] the cost referred to in paragraph (a) and the cost of <u>land for [open]</u> parks and <u>open</u> spaces if the land development application provides for the use of land for residential purposes; or</p> <p>(c) <u>the costs referred in paragraphs (a) and (b) and</u>, with the approval of the Minister, [contribute towards capital infrastructure assets required to meet increased demand for] the cost of municipal services other <u>than</u> engineering services [not prescribed in terms of the Spatial Planning and Land Use</p>	<p>Under subsection (b) the term “land for parks and open spaces” is used instead of “open parks and spaces” to accord with the terminology in SPLUMA</p> <p>Under subsection (c) include the cost of municipal services other than engineering services</p> <p>This is to clarify that a development charge may contribute to the cost of capital infrastructure assets for engineering services; or such cost as well as the cost of land for parks and open spaces in respect of an application for the use of land for residential purposes; or both these costs as well as, if approved by the Minister for municipal services other than engineering services .</p>

PROPOSED TECHNICAL CHANGES TO BILL

Provisions in the Bill	Proposed technical refinements to provisions in the Bill	Reasons for the proposed technical refinements
<p>2. Capital infrastructure assets definition (clause 1)</p> <p>‘capital infrastructure asset’ means land, property, building or any other immovable asset, including plant and equipment that accede thereto, which is required for provision of an engineering service;</p>	<p>‘capital infrastructure asset’ means land, property, building or any other immovable asset, including plant and equipment that accede thereto, which is required for provision of an engineering service, <u>parks and open spaces or a municipal service</u>;</p>	<p>This is to clarify that municipalities can use development charges to contribute to infrastructure to service parks and open spaces and municipal services.</p>

PROPOSED TECHNICAL CHANGES TO BILL

Provisions in the Bill	Proposed technical refinements to provisions in the Bill	Reasons for the technical refinements
<p>3. Section 9G(7) (clause 4):</p> <p>(6) A municipality may require that link engineering services are installed to accommodate a greater capacity than that which is required for the land development, in order to support future development in the area of the land development.</p> <p>(7) If in the circumstances provided for in subsection (6), the municipality does not require the installation of link engineering services to accommodate a greater capacity, the municipality must reimburse or off-set the amount of the development charge by the difference between the costs of the link engineering services installed, and the costs of those link engineering services that would have been required for that land development.</p>	<p>(7) If in the circumstances provided for in subsection (6), the municipality does [not] require the installation of link engineering services to accommodate a greater capacity, the municipality must reimburse or off-set the amount of the development charge by the difference between the costs of the link engineering services installed, and the costs of those link engineering services that would have been required for that land development.</p>	<p>There’s a typographical error and it makes the intention of subsection (7) incorrect.</p> <p>Therefore, considering section 9G(6) that section 9G(7) refers to, the omission of “not” is necessary to accord with the intention.</p>

THANK YOU

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