

REPUBLIC OF SOUTH AFRICA

FUND-RAISING AMENDMENT BILL

*(As agreed to by the Portfolio Committee on Social Development
(National Assembly))*

(MINISTER OF SOCIAL DEVELOPMENT)

[B 29B—2020]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Fund-raising Act, 1978, so as to amend certain definitions; to effect certain textual amendments to provide greater clarity; to provide for the discontinuation of certain funds and for the dissolution of any boards responsible for those funds; to establish the Disaster Relief and National Social Development Fund and to transfer any amounts remaining in the discontinued funds to the Disaster Relief and National Social Development Fund; to empower the Minister to make regulations in respect of the financial year of a fund; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 107 of 1978, as amended by section 1 of Act 41 of 1980

1. Section 1 of the Fund-raising Act, 1978 (Act No. 107 of 1978) (hereafter referred to as the principal Act), is hereby amended— 5

(a) by the substitution for the definition of “Minister” of the following definition:
“**Minister**” means the Minister **[of Social Welfare and Pensions]** responsible for social development and, for the purposes of Chapter II, **[includes]** means the Minister **[of Defence]** responsible for defence in so far as that Chapter applies in relation to the South African Defence Force Fund;” and 10

(b) by the substitution for the definition of “Secretary” of the following definition:
“**Secretary**” means the **[Secretary for Social Welfare and Pensions]** Director-General of the Department of Social Development and, for purposes of Chapter II, **[includes]** means the **[Head of the South African Defence Force]** Secretary of Defence in so far as that Chapter applies in relation to the South African Defence Force Fund;”. 15

Substitution of section 17 of Act 107 of 1978 20

2. Section 17 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:
“(3) A board shall consist of not more than **[fifteen]** fourteen members, of whom at least one half shall be appointed on a full-time basis.”; 25

- (b) by the substitution for subsection (4) of the following subsection:
“(4) At least half of the members of a board shall be persons who are not officers in the public service or the security services referred to in section 199(1) of the Constitution of the Republic of South Africa, 1996.”; and 5
- (c) by the substitution for subsection (11) of the following subsection:
“(11) A member who is not an officer of the public service or the security services shall be paid such allowances from the Fund in question as the Minister may with the concurrence of the Minister of Finance determine.”. 10

Amendment of section 18 of Act 107 of 1978, as amended by section 4 of Act 41 of 1980, section 1 of Act 19 of 1981, section 2 of Act 82 of 1983, section 4 of Act 115 of 1991 and section 2 of Act 43 of 1994

3. Section 18 of the principal Act is hereby amended— 15
- (a) by the substitution for paragraph (a) of the following paragraph: 15
“(a) the board of the Disaster Relief and National Social Development Fund shall be, with due regard to the financial position of that Fund and the requirements of each case [,]—
(i) to render to persons, organizations and bodies who or which suffer damage or loss caused by a disaster; and 20
(ii) to identify the prescribed social development activities or empowerment projects, and to provide, such assistance, in cash or otherwise, as the board may deem fair and reasonable;”;
- (b) by the substitution for paragraph (b) of the following paragraph: 25
“(b) the board of the South African Defence Force Fund shall be, with due regard to the financial position of that Fund and the requirements of each case, to render such aid as the board may deem fair and reasonable to—
(i) [members and] former members of the South African 30
Defence Force and of auxiliary services established and designated in accordance with section 80(1) of the Defence Act, 1957 (Act No. 44 of 1957), and their dependants; and
(ii) members and former members of the South African 35
National Defence Force and auxiliary services established and designated under section 199 of the Constitution of the Republic of South Africa, 1996, and sections 11, 16, and 17 of the Defence Act, 2002 (Act No. 42 of 2002), and their dependants,
who suffer financial hardship or financial distress arising, directly or 40
indirectly, out of any service or duties contemplated in section 3(2) of the Defence Act, 1957, section 201(2) of the Constitution of the Republic of South Africa, 1996, and sections 18 and 19 of the Defence Act, 2002, performed by such members, and to provide facilities to or for such members and former members who perform 45
or performed such service or duties;”;
- (c) by the deletion of paragraphs (c) to (e).

Amendment of section 20 of Act 107 of 1978

4. Section 20 of the principal is hereby amended by the addition of the following subsection: 50
“(3) A board must ensure the disbursement of funds or provision of assistance is done within a reasonable time in consultation with the Minister in line with section 50 of the Public Finance Management Act (Act No. 1 of 1999).”.

Amendment of section 22 of Act 107 of 1978

5. Section 22 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Funds referred to in section 16, read with section 25A (2)(b), shall consist of—”; and

(b) by the substitution for subsections (4) to (8) of the following subsections, respectively:

“(4) A board shall deposit all the moneys received by it in an account which it shall open with a banking institution registered in terms of the Banks Act, [1965 (Act No. 23 of 1965)] 1990 (Act No. 94 of 1990).

(5) A board shall from time to time invest with the **[Public Debt Commissioners] Public Investment Corporation Limited** established by section 2(1) of the Public Investment Corporation Act, 2004 (Act No. 23 of 2004), or in such other manner as the Minister may, with the concurrence of the Minister of Finance, determine, all moneys which are not required for immediate use or as a reasonable working balance.

(6) The financial year of a fund shall terminate on 31 March in each year or as prescribed by the Minister.

(7) Each Fund is, subject to the directions of the Minister, under the control of the Secretary, who—

(a) is the accounting officer of the Fund; and

(b) must keep full and proper records of the financial affairs of the Fund and must prepare financial statements for each financial year, in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(8) The records and financial statements contemplated in subsection (7) must be audited by the Auditor-General and must—

(a) be included as part of the annual report and audited financial statements of the Department of Social Development or the Department of Defence and Military Veterans, as the case may be, referred to in section 40 of the Public Finance Management Act, 1999; and

(b) be submitted to the relevant Minister to enable compliance with section 65 of the Public Finance Management Act, 1999.”.

Substitution of section 25 of Act 107 of 1978

6. The following section is hereby substituted for section 25 of the principal Act:

“Performance of administrative work of boards

25. (1) The administrative work, including receipt and disbursement of money incidental to the performance of the functions or the exercise of the powers of a board or of any committee of the board, must—

(a) in the case of the Disaster Relief and National Social Development Board, be performed by officers in the public service designated by the Secretary and who must be under his or her control;

(b) in the case of the South African Defence Force Fund Board, be performed by members of the South African National Defence Force designated by the Secretary and who must be under his or her control.

(2) The disbursement of funds or provision of assistance as contemplated—

(a) in section 18(a) must be carried out by the South African Social Security Agency established by section 2 of the South African Social Security Agency Act, 2004 (Act No. 9 of 2004);

(b) in section 18(b) must be carried out by the Board referred to in that section.”.

Insertion of section 25A in Act 107 of 1978

7. The following section is inserted after section 25 of the principal Act:

“Discontinuation and transfer of certain funds

- 25A.** (1) In this section ‘**effective date**’ means the date of commencement of section 7 of the Fund-raising Amendment Act, 2022. 5
- (2) As from the effective date—
- (a) the following funds established under section 16 cease to exist:
 - (i) The Refugee Relief Fund;
 - (ii) the State President’s Fund; and
 - (iii) the Social Relief Fund; 10
 - (b) the Disaster Relief Fund established under section 16(a) continues to exist under the name of the Disaster Relief and National Social Development Fund;
 - (c) all amounts credited to any fund referred to in paragraph (a) immediately before the effective date vest in the Disaster Relief and National Social Development Fund; 15
 - (d) any board established by the Minister in terms of section 17 and responsible for managing a fund referred to in paragraph (a) is dissolved; and
 - (e) subject to paragraph (c), all liabilities, assets and rights existing as well as accruing of the funds referred to in paragraph (a) must devolve upon the Department of Social Development.”. 20

Amendment of section 36 of Act 107 of 1978

8. Section 36 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph: 25

“(c) the financial year of the Fund as contemplated in section 22(6);”.

Short title and commencement

9. (1) This Act is called the Fund-raising Amendment Act, 2022, and takes effect on a date fixed by the President by Proclamation in the *Gazette*. 30

(2) Different dates may, under subsection (1), be so fixed in respect of different provisions of this Act.

MEMORANDUM ON THE OBJECTS OF THE FUND-RAISING AMENDMENT BILL, 2020

1. PURPOSE OF BILL

The Fund-raising Amendment Bill, 2020 (“the Bill”), aims to rationalise the Fund-raising Act, 1978 (Act No. 107 of 1978) (“the principal Act”), by consolidating the Disaster Relief Fund, the Refugee Relief Fund, the Social Relief Fund and the State President’s Fund into the Disaster Relief and National Social Development Fund, so as to focus on proactive mitigation of disasters and promote the social development of communities. The consolidation of the Funds will streamline administrative processes, and enable more efficient services to poor communities and reduce costs.

2. SUMMARY OF PROVISIONS OF BILL

- 2.1 Clause 1 seeks to amend the definitions of “Minister” and “Secretary” to remove obsolete references in section 1 of the principal Act.
- 2.2 Clause 2 seeks to amend section 17 of the principal Act. The proposed amendment mainly intends to reduce the maximum number of members of a board established under the principal Act to administer a fund from 15 to nine.
- 2.3 Clause 3 seeks to amend section 18 of the principal Act to make provision for the objects of the Disaster Relief and National Social Development Fund which consolidates the funds that it replaces in the principal Act.
- 2.4 Clause 4 seeks to amend section 20 of the principal Act in order to empower the Minister to give directions to a board in respect of disbursement of funds and to ensure that a board acts in accordance with ethical principles.
- 2.5 Clause 5 seeks to amend section 22 of the principal Act mainly to provide for the financial management and control of the funds established in the principal Act in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- 2.6 Clause 6 seeks to substitute section 25 of the principal Act. The proposed substitution seeks to further provide for the administrative work of the boards and for disbursement of funds managed by the boards established in the principal Act.
- 2.7 Clause 7 seeks to insert section 25A in the principal Act in order to provide for the discontinuation and transfer of certain funds. The new section 25A provides that, as from the effective date, which is the date of commencement of section 7 of the Fund-raising Amendment Act, 2020—
 - (a) the following funds established under section 16 of the principal Act cease to exist:
 - (i) The Refugee Relief Fund;
 - (ii) the State President’s Fund; and
 - (iii) the Social Relief Fund;
 - (b) the Disaster Relief Fund established under section 16(a) of the principal Act continues to exist under the name of the Disaster Relief and National Social Development Fund;
 - (c) all amounts credited to any fund referred to in paragraph (a), immediately before the effective date, vest in the Disaster Relief and National Social Development Fund;
 - (d) any board established by the Minister in terms of section 17 and responsible for managing a fund referred to in paragraph (a) is dissolved; and
 - (e) subject to paragraph (c), all liabilities, assets and rights existing as well as accruing of the funds referred to in paragraph (a) must devolve upon the Department of Social Development.

- 2.8 Clause 8 seeks to amend section 36 of the principal Act in order to further provide for the making of regulations.
- 2.9 Clause 9 provides for the short title and commencement of the Act. It will be noted that the commencement clause provides for different commencement dates in respect of the sections of the Act to be proclaimed so as to cater for the bringing into operation of, for instance, the aforesaid section 7 of the Fund-raising Amendment Act, 2022, at a later date to enable the Department to prepare for the implementation thereof.

3. DEPARTMENT/ BODIES/ PERSONS CONSULTED

- 3.1 The Presidency, National Treasury, Department of International Relations and Cooperation, Department of Cooperative Governance and Traditional Affairs, Department of Defence and Military Veterans, Department of Home Affairs, Black Sash, all nine provincial Departments of Social Development and the South African Social Security Agency were consulted and supported the Bill.
- 3.2 The Bill was published in *Gazette* No. 40861, under Notice No. 469 of 26 May 2017 for public comments for a period of 30 days.

4. FINANCIAL IMPLICATIONS FOR STATE

- 4.1 The existing funds under the Fund-raising Act, other than the South African Defence Force Fund, will be consolidated into one Disaster Relief and National Social Development Fund. The current values of the various relief funds are as follows:

Disaster Relief Fund	R28 000 000 (Active)
State President's Fund	R40 741 682 (Dormant)
Refugee Relief Fund	R640 408.03 (Dormant)
Social Relief Fund	R39 008 852 (Dormant)
Total	R108 390 942.03

- 4.2 The Board members will be remunerated from the Disaster Relief and Social Development Fund. In line with section 17(11) of the principal Act, the Board will be paid per sitting in accordance with the remuneration scale the Minister in concurrence with the Minister of Finance may determine.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department of Social Development are of the opinion that the Bill should be dealt with in terms of the procedure prescribed by the provisions of section 76 of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, namely "welfare services".
- 5.2 The principles in the case of *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* 2010 (8) BCLR 741 (CC) are important when determining if a Bill ought to be tagged as either a section 75 or 76 Bill. The test laid down in that case for determining the procedure to be followed in enacting a Bill is whether the provisions of the Bill fall within a functional area listed in Schedule 4 or, in substantial measure, affect the interests of the provinces.
- 5.3 The tagging of the Bill requires firstly, considering all the provisions of the Bill and determining whether they substantially impact the interests of the provinces. Thereafter a consideration of whether or not the impact of these provisions is not so small as to be regarded as trivial must be carried out. The tagging of Bills before Parliament must be informed by the need to ensure that provinces fully and effectively exercise their appropriate role in the process of considering national legislation that substantially affects them.

- 5.4 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.