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national treasury

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The Director-General
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Attention: Mr T Motlashuping

**COMMENTS REGARDING THE CROSS-BOUNDARY MUNICIPALITIES LAWS REPEAL
AND RELATED MATTERS AMENDMENT BILL, 2008**

I refer to your request for comments regarding the Cross-Boundary Municipalities Laws Repeal and Related Matters Amendment Bill, 2008 ("the Bill"), which was published in the *Government Gazette* of 12 December 2008, under notice number 1538 of 2008.

The National Treasury's comments to the Bill are attached herewith as Annexure "A". I trust that these comments will assist you as you finalise the Bill.

Kind regards

KENNETH BROWN
ACTING DEPUTY DIRECTOR-GENERAL: INTERGOVERNMENTAL RELATIONS

Date: 16/01/2008

Annexure

Comments by the National Treasury on the Cross-Boundary Municipalities Laws Repeal and Related Matters Bill, 2009

1. Various administrative/institutional and legislative processes will need to be complied with to enable the re-alignment of the Merafong Municipality from the North West to Gauteng Province. The Sixteenth Constitutional Amendment and the Cross-Boundary Municipalities Laws Repeal and Related Matters Bill form part of a package of legislation to enable this shift. It is however important that the legislative processes be aligned to other critical processes to ensure uninterrupted service delivery in these areas by the affected provinces and municipalities during this process.
2. The key responsibility of the National Treasury in this process is to ensure that the necessary adjustments be made to the intergovernmental fiscal framework to cater for these shifts. Such shifts will however be difficult to accommodate in the 2009 Budget as these processes are far advanced.

Proposed amendments to the Cross-Boundary Municipalities Laws Repeal and Related Matters Bill

3. Although section 5 of the Cross-Boundary Municipalities Laws Repeals and Related Matters Act, 2005 (the Act) deals with transitional arrangements regarding the transfer of provincial functions, assets and liabilities, the Cross-Boundary Municipalities Laws Repeal and Related Matters Amendment Bill, 2008 (the Bill) does not effect any amendments to necessary to ensure a smooth transition when Merafong Local Municipality will shift from North West to Gauteng Province.
4. According to section 5 of the Act, reliance is placed on affected provinces to enter into an implementation protocol to address transitional arrangements. If the provinces cannot reach an agreement on an implementation protocol, then the matter would be referred to the National Council of Provinces. The

National Council of Provinces would then have a mandate to assist the provinces to reach an agreement within two months after the re-determination of provincial and municipal boundaries comes into effect. If no agreement is reached within that period, then the province receiving a municipality into its area of jurisdiction must start exercising functions and providing services in the area, even if proper transitional arrangements have not been put in place. If an implementation protocol is put in place, then the Presidential Co-ordinating Council established in terms of section 6 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005) would be responsible to co-ordinate the implementation of the protocol.

5. The National Treasury is of the view that section 5 of the Act needs to be extended to provide for a body that will be authorised to exercise effective oversight, in order to ensure that provinces enter into implementation protocols, and to ensure that the implementation protocols and service level agreements entered into by sectoral departments in terms of the implementation protocols properly address all of the transitional issues.
6. It is recommended that the Bill should provide for the amendment of section 5 of the Act to designate a body with an oversight function in respect of the process of re-integrating Merafong Local Municipality into Gauteng Province. That body must be empowered to ensure that –
 - 6.1. in general, all of the critical fiscal and financial issues arising from the re-determination are appropriately addressed;
 - 6.2. the provinces of Gauteng and North West enter into an implementation protocol; and
 - 6.3. the implementation protocol agreed to by the provinces and the service level agreements which are entered into by sectoral departments in terms of the implementation protocol properly address all of the transitional issues relating to the re-incorporation of Merafong Local Municipality into Gauteng Province.

Implications of boundary shifts on the fiscal framework

7. A re-determination process also has very significant impacts on the fiscal framework and the equitable division of revenue to the provinces and municipalities, as well as their conditional grant allocations. The impacts on provinces and municipalities from the previous re-determination process are still being felt. The implications of the shift in the boundaries of North West and Gauteng Provinces will once again impact on the fiscal framework and the necessary steps need to be taken to ensure a smooth transition when the changes become effective.
8. The re-determination of provincial boundaries will require adjustments to intergovernmental fiscal transfers (viz., the Local Government Equitable Share, the Provincial Equitable Share, the Infrastructure Grant for Provinces and the Municipal Infrastructure Grant) due to adjustments to population, and powers and functions, both for the two affected provinces and the affected municipalities.
9. The budget process for provinces is far advanced as the "national and provincial" financial year commences from 1 April. The 2009 Budget will be submitted to Cabinet on 11 February 2009. Shortly after this, similar processes will be followed by provinces for the adoption of their budgets. It will accordingly not be possible to make any adjustments to provincial allocations for the 2009 Budget to account for the re-demarcation of the Merafong Municipality from North West to Gauteng Province. To ensure uninterrupted service delivery, the status quo could be maintained where "releasing" provinces continue to spend in the areas for the 2009/10 financial year as the resources are still contained in their budgets or that appropriate agreements be put in place between the affected parties to ensure the necessary flow of funds between "releasing" and "receiving" provinces.

10. Compared to provinces, the fiscal framework for local government is more easily adaptable to deal with the re-alignment of municipalities to different provinces, such as the shift of Merafong Local Municipality from North West to Gauteng Province. This is however subject to certain constitutional and legislative processes being concluded at the very latest end 2008 and voter representation remaining unaltered. As the necessary legislation to underpin these boundary changes are not yet in place (January 2009) amendments to the local government fiscal framework for the 2009 Budget is not possible.
11. Co-ordination with the National Treasury is therefore required to ensure the alignment of finances to the affected provinces and municipalities within the annual budget cycle and the Medium Term Expenditure Framework both in respect of the 2009 Budget and subsequent Budgets (2010 onwards).