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REPUBLIC OF SOUTH AFRICA

INTERGOVERNMENTAL FISCAL RELATIONS BILL

(As amended by the Portfolio Committee on Finance (National Assembly))

(MINISTER OF FINANCE)

[B 106B—97]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP INTERREGERINGS- FISKALE BETREKKINGE

(Soos gewysig deur die Portefeuljekomitee oor Finansies (Nasionale Vergadering))

(MINISTER VAN FINANSIES)

[W 106B—97]

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BILL

To promote co-operation between the national, provincial and local spheres of government on fiscal, budgetary and financial matters; to prescribe a process for the determination of an equitable sharing and allocation of revenue raised nationally; and to provide for matters in connection therewith.

———

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

Definitions

1. In this Act, unless the context otherwise indicates—
"**Budget Council**" means the Budget Council established by section 2;
"**Budget Forum**" means the Local Government Budget Forum established by section 5;
"**Commission**" means the Financial and Fiscal Commission established by section 220 of the Constitution;
"**Division of Revenue Bill**" means the Bill containing the legislation envisaged in section 214(1) of the Constitution;
"**financial year**" means a financial year as determined for state departments;
"**MEC for finance**" means the member of the Executive Council of a province to whom the responsibility for finance in the province has been assigned;
"**Minister**" means the Minister of Finance.

PART 1

BUDGET COUNCIL

Establishment

2. (1) There is a Budget Council consisting of—
(a) the Minister; and
(b) the MEC for finance of each province.
(2) The Minister is the Chairperson of the Budget Council.

Functions

3. The Budget Council is a body in which the national government and the provincial governments consult on—
(a) any fiscal, budgetary or financial matter affecting the provincial sphere of government;
(b) any proposed legislation or policy which has a financial implication for the provinces, or for any specific province or provinces;
(c) any matter concerning the financial management, or the monitoring of the finances, of the provinces, or of any specific province or provinces; or
(d) any other matter which the Minister has referred to the Council.

Meetings

4. (1) The Minister convenes the meetings of the Budget Council, which must meet at least twice in each financial year.

(2) Meetings of the Budget Council may be attended by—

(a) the Chairperson of the Commission or a delegation of the Commission designated by the Chairperson of the Commission; and

(b) any other persons by invitation.

PART 2

LOCAL GOVERNMENT BUDGET FORUM

Establishment

5. (1) There is a Local Government Budget Forum consisting of—

(a) the Minister;

(b) the MEC for finance of each province;

(c) five representatives nominated by the national organisation recognised in terms of the Organised Local Government Act, 1997; and

(d) one representative nominated by each provincial organisation recognised in terms of that Act.

(2) The Minister is the Chairperson of the Budget Forum.

Functions

6. The Budget Forum is a body in which the national government, the provincial governments and organised local government consult on—

(a) any fiscal, budgetary or financial matter affecting the local sphere of government;

(b) any proposed legislation or policy which has a financial implication for local government;

(c) any matter concerning the financial management, or the monitoring of the finances, of local government; or

(d) any other matter which the Minister has referred to the Forum.

Meetings

7. (1) The Minister convenes the meetings of the Budget Forum, which must meet at least once in each financial year.

(2) Meetings of the Budget Forum may be attended by—

(a) the Chairperson of the Commission or a delegation of the Commission designated by the Chairperson of the Commission; and

(b) any other persons by invitation.

PART 3

PROCESS FOR REVENUE-SHARING AMONG THE SPHERES OF GOVERNMENT

Revenue-sharing and allocation of money in terms of section 214 of Constitution

8. The process for the sharing of revenue raised nationally among the national, provincial and local spheres of government in terms of section 214(1)*(a)*, the division of the provincial share among the provinces in terms of section 214(1)*(b)*, and any allocation of money to the provincial governments, local government and municipalities in terms of section 214(1)*(c)* of the Constitution, must be effected in accordance with this Part.

Commission's recommendations

9. (1) At least ten months (or a later date agreed to between the Minister and the Commission) before the start of each financial year, the Commission must submit to both Houses of Parliament and the provincial legislatures, for tabling in the Houses and

the legislatures, and also to the Minister, recommendations for that financial year regarding—

(a) an equitable division of revenue raised nationally, among the national, provincial and local spheres of government;

(b) the determination of each province's equitable share in the provincial share of that revenue; and

(c) any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations should be made.

(2) If the Minister and the Commission agree on a later date for the submission of the Commission's recommendations in terms of subsection (1), that date may not be later than 60 days before the introduction of the Division of Revenue Bill in the National Assembly for the relevant financial year.

(3) When making its recommendations the Commission must take into account the matters listed in section 214(2)*(a)* to *(j)* of the Constitution.

Division of Revenue Bill

10. (1) Each year when the Annual Budget is introduced, the Minister must introduce in the National Assembly a Division of Revenue Bill for the financial year to which that Budget relates.

(2) The Division of Revenue Bill must specify—

(a) the share of each sphere of government of the revenue raised nationally for the relevant financial year;

(b) each province's share of the provincial share of that revenue; and

(c) any other allocations to the provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations are or must be made.

(3) After receiving any recommendations of the Commission in terms of section 9(1), but before the Division of Revenue Bill is introduced in the National Assembly, the Minister must consult—

(a) the provincial governments, either in the Budget Council or in another way;

(b) organised local government, either in the Budget Forum or in another way; and

(c) the Commission.

(4) The Commission must be consulted in terms of subsection (3) at least 14 days before the Division of Revenue Bill is introduced.

(5) When the Division of Revenue Bill is introduced, it must be accompanied by a memorandum explaining—

(a) how the Bill takes account of each of the matters listed in section 214(2)*(a)* to *(j)* of the Constitution;

(b) the extent to which account was taken of any recommendations of the Commission submitted to the Minister in terms of section 9 or as a result of consultations with the Commission in terms of subsection (3) of this section; and

(c) any assumptions and formulae used in arriving at the respective shares mentioned in subsection (2)*(a)* and *(b)*.

Short title and commencement

11. This Act is called the Intergovernmental Fiscal Relations Bill, 1997, and takes effect on 1 January 1998.

MEMORANDUM ON THE OBJECTS OF THE INTERGOVERNMENTAL FISCAL RELATIONS BILL, 1997

Intergovernmental financial and fiscal relations are critical for the smooth functioning of government in South-Africa. In this respect the Constitution deals with a number of matters of importance to public finance: Co-operative governance, the equitable division of revenue among the spheres of government, the setting of norms and standards for Schedules 4 and 5 functions, the regulation of budgets, treasury norms and standards and monitoring and intervention mechanisms. Various new legislative measures are needed to give effect to these constitutional provisions.

The Intergovernmental Fiscal Relations Bill has been drafted to give effect to section 41(2) and to facilitate the implementation of section 214 of the Constitution. Section 41(2) requires the enactment of legislation establishing or providing ''structures and institutions to promote and facilitate intergovernmental relations'', whilst section 214 deals with the division of revenue raised nationally among the different spheres of government. This Bill is designed to facilitate and guarantee a basic system of consultation to promote a budget-making process that is fair.

The Bill establishes—

(a) a Budget Council which will be a formal body in which the national government and the provincial governments consult on fiscal, budgetary and other financial matters affecting the provinces;

(b) a Local Government Budget Forum which will also be a formal body but in which the national government, the provincial governments and organised local government consult on fiscal, budgetary and financial matters affecting local government; and

(c) a formal procedure for consultation to be followed before the annual division among the national, provincial and local spheres of government of revenue raised nationally, takes place.

BUDGET COUNCIL

The Budget Council will consist of the Minister of Finance and the nine provincial MECs for finance. It will be convened by the Minister to discuss the budgets and broader financial matters relating to the provincial sphere of government. It will be able to submit recommendations to the Cabinet for its consideration. It must meet at least twice a year.

It is envisaged that national departments will refer any legislation affecting the financial interests of the provinces to the Budget Council. This includes any norms and standards legislation imposed nationally.

LOCAL GOVERNMENT BUDGET FORUM

Like the Budget Council, the Budget Forum will be a consultative body intended primarily to discuss the criteria for the allocation of money to local government, and other financial and fiscal matters affecting the local sphere of government. It will consist of the Minister of Finance, the provincial MECs for finance and representatives of organised local government. Given that the Minister for Provincial Affairs and Constitutional Development has a Minmec which focuses on other matters affecting local government, and given the higher fiscal capacity and hence smaller transfers to local government, the Budget Forum will meet less regularly than the Budget Council, but must meet at least once a year.

CONSULTATION PROCESS FOR DIVISION OF REVENUE

Section 214 of the Constitution requires an Act of Parliament to provide for—

(a) an equitable division of revenue raised nationally among the national, provincial and local spheres of government;

(b) an equitable division of the provincial share of that revenue among the provinces; and

(c) any other allocations that may be made to provinces, local government and municipalities from the national government's share of that revenue.

It is envisaged that each year, in addition to the Annual Budget, a Bill providing for this division of revenue for the relevant financial year, will also have to be introduced. The Intergovernmental Fiscal Relations Bill prescribes the process of consultation that must take place before the annual Division of Revenue Bill is introduced.

This Bill is an additional mechanism promoted by national government in the spirit of co-operative governance to ensure a fair process.

The Bill—

* requires the Financial and Fiscal Commission to submit recommendations to the Minister of Finance on the division of the revenue at least 10 months before the beginning of a financial year;
* requires the Minister to consult with both provincial governments and organised local government, either in the Budget Council or Budget Forum, respectively, or in another way, before the Division of Revenue Bill is introduced in Parliament;
* requires the Minister to submit a copy of the draft Division of Revenue Bill to the Financial and Fiscal Commission before it is tabled; and
* finally, requires the Minister to include with the Bill an explanation of—
  (a) the account that was taken of the factors listed in section 214(2) of the Constitution;
  (b) the extent to which account was taken of recommendations of the FFC; and
  (c) the way in which the respective shares were calculated (that is, any assumptions and formulae used in arriving at the respective shares).

By including in a memorandum accompanying the Division of Revenue Bill, the assumptions and formulae used in the division of the revenue, ensures transparency but at the same time avoids legal technicalities that would accompany any attempts to include them in the legislation itself.

DEPARTMENTS AND INSTITUTIONS CONSULTED

Provincial MECs for finance.
Chairperson and Deputy Chairperson of the Financial and Fiscal Commission.
South African Local Government Association (on broad approach).

PARLIAMENTARY PROCEDURE

The Department of Finance and the State Law Advisers are of the opinion that this Bill should be dealt with in terms of section 75 of the Constitution. Note that this Bill is not the legislation envisaged in section 214, which of course must take the section 76(1) route.