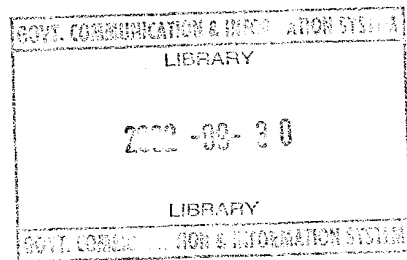


REPUBLIC OF SOUTH AFRICA

GAS REGULATOR LEVIES BILL

(As introduced in the National Assembly as a money Bill)
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)



[B 47—2002]

ISBN 0 621 32986 X

No. of copies printed 1 800

BILL

To provide for the imposition of levies by the National Gas Regulator; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context indicates otherwise—
 - “distribution” means “distribution” as defined in the Gas Act; 5
 - “gas” means “gas” as defined in the Gas Act;
 - “Gas Act” means the Gas Act, 2001 (Act No. 48 of 2001);
 - “Gas Regulator” means the National Gas Regulator established by section 3 of the Gas Act;
 - “importer” means the owner, at the point of importation, of gas imported into the Republic of South Africa, either by pipeline or in the form of liquefied natural gas and “imported” has a similar meaning; 10
 - “levy” means the amount imposed under section 2;
 - “Minister” means the Minister of Minerals and Energy;
 - “producer” means an entity that recovers gas from wells in the earth or that manufactures synthetic or artificial gas; 15
 - “Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - “transmission” means “transmission” as defined in the Gas Act.

Imposition of levies 20

2. (1) The Gas Regulator may by notice in the *Gazette*—
 - (a) impose levies for the purpose of meeting the general administrative and other costs of the Gas Regulator and the functions performed by the Gas Regulator;
 - (b) specify the intervals and times in respect of the payment of such levies are payable; 25
 - (c) determine interest as contemplated in section 4; and
 - (d) vary levies.
- (2) The levies imposed and varied under subsection (1) must be—
 - (a) based on the amount of gas, measured in gigajoules, delivered by importers and producers to inlet flanges of transmission or distribution pipelines; and 30
 - (b) paid by the person holding the title to the gas at the inlet flange.
- (3) Before imposing levies, varying levies, or determining interest, the Gas Regulator must—
 - (a) publish the proposed levies, variation or determination in such a manner as it considers appropriate in order to bring the proposed levies, variation or determination to the attention of stakeholders in the gas industry, together with a statement explaining the reasons for the proposed imposition or variation of levies or determination of interest and an invitation for representations to be made to the Gas Regulator within a specified and reasonable time; 35
 - (b) have regard to any representation made to it in terms of paragraph (a); 40

- (c) give the Minister notice in writing of the proposed imposition or variation of levies, or determination of interest, and specify the period for which such imposition, variation or determination is intended to be operational;
- (d) provide the Minister with reasons for the imposition or variation of levies or determination of interest; 5
- (e) provide the Minister with evidence of consultation with stakeholders or attempts to consult with stakeholders in the gas industry and of the degree of concurrence among such stakeholders with regard to the imposition or variation of the levies or determination of interest.

(4) The Minister must, with the concurrence of the Minister of Finance, within a period of 60 days after receiving a notice contemplated in subsection (3)(c), give the Gas Regulator written approval or disapproval of the proposed imposition, variation or determination and, in the event of disapproving that imposition, variation or determination, also give reasons for the disapproval thereof. 10

(5) After the receipt of the notice as contemplated in subsection (4), the Minister may, with the concurrence of the Minister of Finance, recommend an alternative levy or interest determination. 15

(6) The Gas Regulator may impose or vary levies or determine interest under subsection (1) only after the levies or interest has been approved by the Minister with the concurrence of the Minister of Finance. 20

(7) The Gas Regulator must publish the notice contemplated in subsection (1) at least 30 days before the commencement of that imposition, variation or determination.

(8) The levies imposed, levies varied or interest determined under subsection (1) must be reviewed annually by the Gas Regulator.

Disposal and management of levies 25

3. (1) The levies imposed, levies varied and interest determined under section 2(1) form part of the funds of the Gas Regulator.

(2) The levies and interest collected by the Gas Regulator must be paid into a bank account designated for that purpose by the Gas Regulator and approved by the National Treasury in terms of section 7(2) of the Public Finance Management Act. 30

(3) (a) At least six months before the start of the financial year of the Department of Minerals and Energy, or such other period as may be agreed upon between the Minister and the Gas Regulator, the Gas Regulator must submit to the Minister—

- (i) a budget of estimated revenue and expenditure for the next financial year of the Gas Regulator as required by section 53 of the Public Finance Management Act; and 35
- (ii) a business plan in the format prescribed under section 54(1) of the Public Finance Management Act, covering the affairs of the Gas Regulator for the following three financial years.

(b) The budget and business plan contemplated in paragraph (a) must be submitted for the approval of the Minister and the concurrence of the Minister of Finance. 40

Non-payment of levies

4. (1) Where a levy is not paid by the person contemplated in section 2(2)(b) on the day such levy becomes due and payable, that person is, apart from payment of the levy, liable to interest calculated upon the unpaid amount of the levy from that date, subject to subsections (2) and (3). 45

(2) The calculation of interest due and payable to the Gas Regulator must be based on the uniform interest rate contemplated in section 80(1)(b) of the Public Finance Management Act.

(3) Levies and interest due are deemed to be a debt due to the Gas Regulator and may be recovered by the Gas Regulator by judicial process in any competent court. 50

Levy imposition to lapse after five years

5. (1) Subject to subsection (2), any levy imposed in terms of section 2(1)(a) lapses five years after the day on which it was introduced.

(2) The Minister must, at least three months but not more than 12 months before the day on which an imposition of a levy contemplated in section 2(1)(a) would otherwise lapse, at the written request of the Gas Regulator and with the concurrence of the 55

Minister of Finance, give the Gas Regulator in writing approval or disapproval of a re-imposition of such levy and, in the event of disapproving the re-imposition, also give reasons for the disapproval thereof.

(3) Before approving a re-imposition contemplated in subsection (2), the Minister must commission a review of the performance of the Gas Regulator as contemplated in section 6. 5

Assessment of performance of Gas Regulator

6. (1) In this section “performance” in relation to the Gas Regulator means all or any of the following matters:

- (a) The efficiency, economy and effectiveness of the Gas Regulator’s management of the financial resources at its disposal; 10
- (b) the benefits deriving from the Gas Regulator’s work to those who bear the levies and other charges imposed by the Gas Regulator; and
- (c) any other matter determined by the Minister in writing and with the concurrence of the Minister of Finance. 15

(2) The Minister may, after consultation with the Gas Regulator, appoint any person to conduct an assessment of, and report to the Minister and the Minister of Finance on, the performance of the Gas Regulator if the Minister is satisfied that—

- (a) there is sufficient concern among stakeholders in the gas industry about the performance of the Gas Regulator to justify an assessment of that performance; or 20
- (b) the performance of the Gas Regulator is inadequate.

(3) (a) Notwithstanding subsection (2), the Minister must commission an assessment of the performance of the Gas Regulator at least once every five years.

(b) The person appointed to conduct the assessment contemplated in paragraph (a) 25 must report to the Minister and the Minister of Finance.

Short title and commencement

7. This Act is called the Gas Regulator Levies Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE GAS REGULATOR LEVIES BILL, 2002

The Gas Act, 2001 (Act No. 48 of 2001), provides for the establishment of the Gas Regulator as custodian and enforcer of the national regulatory framework for the piped gas industry. The piped gas industry consists of gas transmission, storage and distribution but excludes exploration and production of gas. In terms of section 12(b) of the Gas Act, 2001, the funds of the Gas Regulator consist of, inter alia, "levies imposed by or under separate legislation". The Gas Regulator Levies Bill, 2002 ("the Bill"), seeks to achieve that aim.

The Bill provides that the Gas Regulator may impose levies on gas transported in gas transmission pipelines. The levies will be based on the amount of gas transmitted, and are intended to pay for the costs incurred in the exercise of oversight over the piped industry by the Gas Regulator.

The Bill provides for the Ministers of Minerals and Energy and of Finance to approve or disapprove the imposition or variation of levies or the determination of interest on overdue levies and to recommend alternatives.

CONSULTATION

Persons consulted on the Gas Bill included:

Afrox Limited*; BP South Africa*; British Gas*; CAMALA; Central Energy Fund; Chevron; Cinergy Global Power (Egoli Gas)*; Cosatu*; Department of Justice and Constitutional Development; Department of Labour*; Department of Trade and Industry*; DNCH Mozambique; Durban Electricity Department; Easigas*; ECON; Energy and Development Research Centre*; Energy Africa Ltd.*; Energy & Utility (Pty) Ltd.*; Engen*; Engineering Council*; Enron Corp*; Eskom*; Fedusa*; Forest Exploration International (South Africa); International Energy Agency; L P Gas Association*; Mossgas (Pty) Ltd.*; Namibian Ministry of Mines and Energy; Namcor; Nampower; National Electricity Regulator; National Treasury; Petroleum Agency*; Petronet*; Phillips Petroleum South Africa, Ltd.*; Pioneer Natural Resources South Africa*; Ranger Oil Ltd.; SACOB; SADELEC; Sasol Gas; Sasol Oil*; Sasol Petroleum International; Shell Exploration & Production Namibia*; Shell South Africa (Pty) Ltd.*; Soekor*; Texaco Namibia Resources Inc.*; USA Department of Energy*; World Bank*. (* submitted written comments.)

FINANCIAL IMPLICATIONS FOR STATE

There are no financial implications for the State, except that the levy will release the State of the financial burden of funding the Gas Regulator.

PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Minerals and Energy are of the view that this Bill is a money Bill as contemplated in section 77 of the Constitution. In terms of section 77(2) of the Constitution all money Bills must be considered in accordance with the procedure established by section 75 of the Constitution.