

PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

MONDAY, 28 OCTOBER 2019

COMMITTEE REPORT

Report of the Standing Committee on Finance, Economic Opportunities and Tourism (the Committee) on the recommendations for the Special Appropriation Bill [B10–2019](S77):

1. On 23 July 2019, the Minister of Finance, Mr T Mboweni, introduced the Special Appropriation Bill [B10–2019] (the Bill) (Annexure A) to the National Assembly. The Bill is a Section 77 bill that will appropriate an additional amount of R59 billion for the requirements of the Department of Public Enterprises to assist Eskom Holdings SOC Limited with its financial obligations and to provide for matters connected therewith.
2. The R59 billion will be appropriated out of the National Revenue Fund, of which R26 billion will be for the 2019/20 financial year; and R33 billion will be for the 2020/21 financial year. Furthermore, all provinces received the 2020 Medium Term Expenditure Framework (MTEF) (Annexure B: Page 6) Technical Guidelines for Provinces that indicated the following:

“A compulsory budget baseline reduction scenario of 5 per cent in 2020/21, 6 per cent in 2021/22 and 7 per cent in 2022/23 must be shown by institutions indicating where baseline reductions could be implemented with the least implications for service delivery. This must include proposals for non-priority programmes and projects to be scaled down or closed, changing service delivery models and using technology more effectively, etc.”
3. The Chairperson has submitted three letters to National Parliament addressing the matter of the Bill (Annexure C). In the letter dated 2 September 2019 addressed to the Chairperson of the Standing Committee on Appropriations in the National Assembly (NA), the Chairperson noted that the Western Cape is already facing budget cuts, as per National Treasury’s request (point 2), amounting to a possible R13 billion budget cut for the Province, and that bailing out Eskom is unsustainable and will impact negatively on

the overall fiscus. Since provinces would be severely impacted by the Bill, the Chairperson requested that all provinces should be able to provide input on the Bill, and that the NA's Standing Committee on Appropriations should embark on a public participation process on the Bill in all provinces.

On 11 October 2019, the Chairperson submitted a second letter to the Chairperson of the Standing Committee on Appropriations in the NA requesting additional information in terms of the public participation process undertaken by the NA, the period given for public comments, the submissions that were received and considered, and whether the Bill has been referred to the National Council of Provinces (NCOP).

A third letter was addressed to the Chairperson of the NCOP's Select Committee on Appropriations and the Chairperson of the NCOP on 15 October 2019 requesting clarity on whether the Draft Programme of the Select Committee on Appropriations is the final programme as issued by the Select Committee. The NA's programme indicated that the Bill would be adopted on 22 October 2019 at 14h00, while the NCOP's programme indicated that the Select Committee would consider and adopt the Report on the Bill at 10h00 on 23 October 2019 (Annexure D). This indicated that less than 24 hours would pass between the adoption of the Bill in the NA and the consideration of the Report on the Bill in the NCOP's Select Committee, and it would be unlikely that the NCOP's Select Committee would receive a briefing on the Bill, or that there would be meaningful public participation or input from provinces. The Chairperson requested that the NCOP's Select Committee hold public hearings in the provinces during the week of 22 to 28 October 2019, and that it postpone the meeting scheduled for 23 October 2019.

The letters were not responded to, to date.

4. Given the nature and scope of the Bill, the Committee called for an urgent briefing from the Provincial Treasury on the impact of the Bill on the Western Cape's economy (Annexure E), as the National Assembly will be considering the Bill on 22 October 2019, and the National Council of Province's Draft Programme has indicated that the Select Committee on Appropriations will be adopting the report on the Bill on 23 October 2019. The Draft Programme does not indicate a timeline for public participation.
5. The Provincial Treasury briefed the Committee on 18 October 2019 (Annexure F). The briefing indicated that the implication of the Bill is that the credibility and sustainability of the national framework will be eroded which will adversely impact on national transfers, both provincial equitable share and conditional grants to the provincial government, impacting service delivery implementation in the Province.
6. The Committee, having deliberated on the Provincial Treasury's presentation, and after verbal input from the Provincial Department of Economic Development and Tourism, **RECOMMENDED** the following:
 - 6.1 That, in terms of Section 104(5) of the Constitution of the Republic of South Africa, 1996, the NA should consider the following legislative proposals and impose the following conditions in the Bill:
 - 6.1.1 Impose conditions in the Bill to indicate the exact functions for which Eskom must use the R59 billion;

- 6.1.2 Imposed conditions that the Minister of Finance must report to Parliament within three (3) months of the promulgation of the Act regarding the implementation of the Act;
 - 6.1.3 That on all main divisions, current payments, transfers and subsidies, payment of capital assets, and payments of financial assets that are allocated to Eskom, that all procurement contracts entered in to by Eskom be reviewed and all contracts considered wasteful, irregular, and/or of poor value must be reported to the Minister of Finance;
 - 6.1.4 Impose conditions for Eskom to formulate a plan to separate its distribution and transmission operation, and its generating capacity operation into separate business units within 12 months of promulgation of the Act;
 - 6.1.5 Impose conditions that no bonuses be paid to any Executive at Eskom until Eskom's debt is at a reasonable level, such reasonable level to be determined by the Minister of Finance;
 - 6.1.6 That the NA, NERSA and the Minister of Finance must assess Eskom's assets in order to determine its asset base;
 - 6.1.7 That a white paper be drafted on the future of Eskom and must be produced to the Executive within two (2) months of promulgation of the Act;
 - 6.1.8 Impose conditions that Section 34 determinations, of the Electricity Regulation Act, 2006 (Act 4 of 2006), be considered by the Minister of Mineral Resources and Energy for financially sound municipalities; and
 - 6.1.9 Impose conditions for Eskom to support municipalities with generation and distribution, in a financially sustainable manner.
- 6.2 Further, that should the NA pass the Bill and refer it to the NCOP, that in terms of Section 72(1)(a) of the Constitution of the Republic of South Africa, 1996, this Committee recommends to the NCOP the following legislative proposals in terms of the Bill:
- 6.2.1 Impose conditions in the Bill to indicate the exact functions for which Eskom must use the R59 billion;
 - 6.2.2 Impose conditions that the Minister of Finance must report to National Parliament within three (3) months of the promulgation of Act regarding the implementation of the Act;
 - 6.2.3 That on all main divisions, current payments, transfers and subsidies, payment of capital assets, and payments of financial assets that are allocated to Eskom, that all procurement contracts entered to by Eskom be reviewed and all contracts considered wasteful, irregular, and/or of poor value must be reported to the Minister of Finance;
 - 6.2.4 Impose conditions for Eskom to formulate a plan to separate its distribution and transmission operation, and its generating capacity operation into separate business units within 12 months of promulgation of the Act;
 - 6.2.5 Impose conditions that no bonuses be paid to any Executive at Eskom until Eskom's debt is at a reasonable level, such reasonable level to be determined by the Minister of Finance;
 - 6.2.6 That the NA, NERSA and the Minister of Finance must assess Eskom's assets in order to determine its asset base;
 - 6.2.7 That a white paper be drafted on the future on Eskom and must be produced to the Executive within two (2) months of promulgation of the Act;
 - 6.2.8 Impose conditions that Section 34 determinations, of the Electricity Regulation Act, be considered by the Minister of Mineral Resources and Energy for financially sound municipalities; and

- 6.2.9 Impose conditions for Eskom to support municipalities with generation and distribution, in a financially sustainable manner.
7. The Committee RESOLVED to submit the above proposed amendments and conditions to the following persons/Houses/Committees for consideration:
- 7.1 The Speaker of the NA;
 - 7.2 The Chairperson of the NCOP;
 - 7.3 The Chairperson of the Select Committee on Appropriations in the NCOP at the Select Committee meeting scheduled for 23 October 2019 at 10h00; and
 - 7.4 The National Minister of Finance.

8. Minority View

In accordance with Standing Rule 90 of the Western Cape Provincial Parliament's Standing Rules (as at 1 April 2019), the African National Congress (ANC) expressed its Minority View as follows (Annexure G):

- 8.1 The ANC believes that the process followed by the NA and NCOP is within the confines of the law, and the Rules of Parliament;
- 8.2 On 18 October 2019, the Committee had an hour long discussion on the matter, with a briefing by Provincial Treasury that only spoke to national economy implications, and did not indicate any data collated at the time on the implications to individual budget cuts, which was critical information needed to determine the correlation between possible budget cuts to departmental budgets;
- 8.3 Special Appropriations are a normal instrument and practice in Public Finance to allocate and reallocate funds in government as part of budgetary processes and to respond to any emergencies. The Western Cape Provincial Parliament has done this for drought purposes, to move funds from departmental budgets and programmes, which may have implications on those agreed commitments in Annual Strategic Plans of departments;
- 8.4 The ANC supports points 6.1.1 and 6.1.2 of this report; however, the ANC also feels that points 6.1.3 to 6.1.6 are prescriptive to a process that has already been declared by the President in his State of the Nation Address this year, and by the Minister of Finance on page 20, Section 2.1 of his "Electricity: Planning, pricing and Eskom's viability" paper;
- 8.5 The ANC does not support points 6.1.8 and 6.1.9;
- 8.6 The ANC believes it is reckless to make assumptions about where the R59 billion will be taken from, and this information will only be revealed after the tabling of the Medium Term Budget Policy Statement and the Adjustment Budget; and
- 8.7 The ANC supports placing conditions on funds to be appropriated to Eskom, and that oversight over the use of the appropriated funds should be strengthened.