



(b)

Negotiating Mandate of the Western Cape Provincial Parliament

Report of the Standing Committee on Finance and Economic Development, on the *Division of Revenue Bill [B3 -2006] (NCOP)*, dated 8 March 2006, as follows:

The Standing Committee on Finance and Economic Development, having considered the subject of the *Division of Revenue Bill [B3 -2006] (NCOP)*, referred to the Provincial Parliament in terms of the rules of the National Council of Provinces (NCOP), begs to report that it confers on the Western Cape's delegation in the NCOP the authority to support the Bill with the following recommendations and concerns:

Section 7: conditional allocations to provinces

The committee notes that:

1. The definitions given to grant schedules is inconsistent with the actual placement of grants within the schedules. Clarity is therefore required as to how the different schedules are classified.

Section 20: Re-allocation after stopping an allocation

The committee notes that this is a substantive matter and that an amendment in this regard is required.

2. Section 20(1) states that National Treasury may, where it stops an allocation in terms of section 19, after consultation with the transferring national officer, determine that a portion or the full allocation that will be under spent be reallocated to one or more provinces or municipalities on condition that the allocation be spent in the financial year or the next financial year.



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3. As these funds are reallocated in the adjustments estimate (October) it is difficult to spend these funds before the end of the current financial year. The provision of the Act further allows for a time extension for these funds to be spent in the next financial year.
4. The spending of funds before the end of the financial year is especially difficult for grants that need to go to tender as tenders cannot be approved without funding. A provincial department therefore would be required to over commit their own funds in anticipation of other provinces under spending, creating a moral hazard for accounting officers.
5. Although provision is made in Division of Revenue Bill 2006 allowing these funds to be spent in the following financial year, receipt of these funds is problematic for the receiving officer as under spending on the grant becomes imminent in the year in question.
6. The mechanism used to allocate funds between provinces ensures that funds are allocated equitably and that provinces with greater need for funding receive larger amounts. When funds are re-allocated between provinces this allocation mechanism is undermined and the service in question may no longer be provided equitably between the provinces. In most instances, one can argue, that funds will be taken away from a province with low capacity and moved to a province with sufficient capacity to spend the funds. This may contribute to the perpetuation of the under provision of a service in those transferring province and an over provision in the receiving province.
7. To mitigate the possible perverse effect of the shifting of funds, National Treasury would have to ensure that mechanisms are in place to strengthen the capacity of the transferring province to deliver.

Section 22: Unspent schedule 5 or 6 allocation

The committee notes that this is a substantive matter and that an amendment in this regard is required.

8. Section 22 requires that money not spent at the end of a financial year in respect of a schedule 5 or 6 allocation including any interest earned thereon reverts to the national revenue fund, unless the relevant receiving officer can prove, to the satisfaction of National Treasury, that the unspent allocation is committed to identifiable projects.

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9. Section 24 of the Public Finance Management Act (Act 1 of 1999) (PFMA) states that only a provincial treasury may withdraw money from a provincial revenue fund, and may only do so-
- a) To provide funds that have been authorised-
 - i In terms of an appropriation by a provincial Act; or
 - ii as a direct charge against the provincial revenue fund provided for in the constitution or a provincial Act;
 - b) To refund money incorrectly paid into, or which is not due to the provincial revenue fund; or
 - c) To deposit into or invest money in the National Revenue Fund.
10. There are practical implications associated with the withdrawal of funds from the Provincial Revenue Fund. The conditions under which such funds can be withdrawn from the Provincial Revenue Funds are not foreseen in the PFMA. A further implication relates to the period of time over which such funds have accrued interest.
11. No provision is made in the PFMA to transfer money back to the National Revenue Fund under these circumstances. To affect this transfer, the promulgation of an Appropriation Act would be required;
12. Calculating the interest owed on transfers received will be problematic as information including date of grant transfer, daily expenditure against transfer and interest rates earned on investment is required, making it difficult to obtain an accurate estimate of interest earned on grant transfers and therefore owing to the national revenue fund;
13. Furthermore the Bill is not clear on when funds should be transferred back to the national revenue fund.
14. Section 22 is furthermore silent on the role of the national transferring officer in determining the potential underspending and whether funds are committed or not.
15. Conditional grants are voted on both the national votes and at the provincial level. Voting these funds at both levels require consent on their adjustments at both spheres. Would this not undermine the provincial legislature if these were changed at the national level?

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Section 25: Duties of transferring national officer in respect of schedule 5, 6 or 7 allocations.

The committee notes that:

16. Provision should be made in this section to ensure that funds transferred to the Provincial Revenue Fund by the transferring national officer are received on the date specified on the payment schedule.
17. In this regard practice notes were prepared but the effectiveness thereof remain untested. Furthermore to this, is that, the date of transfer is most often a few days later recorded as receipts. The late receipt of funds has been a regular feature of transfers in 2005/06.

Section 29: Duties of provincial treasuries

The committee notes that:

18. Clarity is required regarding the requirements from the head of provincial treasury in Section 29(1).

Section 40: Preparations for the next financial year

The committee notes the following and requests clarity on the practical implication it poses:

19. Section 40(1)(a) requires the receiving officer of a provincial infrastructure grant, by 31 July 2006, to submit detailed five year infrastructure budgets to the provincial treasury.
20. On this date National Treasury publishes the first quarter expenditure figures in terms of section 32, while on the same date departments are supposed to receive audited financial statements but have indicative allocations for year two and three of the MTEF as per the previous year's allocation letters.
21. The date therefore allows for too many uncertainties, which undermine effective planning. Departments, at this stage, do not know what their final allocations and will as in the past have to redo infrastructure budgets- resulting in an inefficient use of time and resources.
22. As these infrastructure budgets do not impact on the allocation process, it is recommended that the submission date be set back to the 30 September 2006.

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23. Section 40(1)(c) requires provincial treasuries to review the infrastructure budgets of all departments and submit them to National Treasury together with the provincial budget submission by 31 August 2006. Given the aforementioned change, it is recommended that this date be set back to 31 October 2006.

24. Section 40(1)(d) and 40(2) – to ensure consistency throughout the document, the wording capital budgets, should be changed to infrastructure budgets, as capital budgets include a broader range of items than infrastructure budgets.

Section 46: Delegations and assignments

The committee notes the following and requests that clarity is required:

25. Provision should be made for the MEC to delegate any powers entrusted to the Provincial Treasury in terms of the DORA and to assign any duties imposed on the provincial treasury in terms of the DORA as is the case with the National Minister.

Conditional Grant Frameworks

Provincial Infrastructure Grant

26. One of the conditions of the Provincial Infrastructure Grant is the submission of the fourth quarter report prior to the flow of the first installment, however the fourth quarter report can only be submitted at the end of April.

Constitutional Concerns

27. Section 214 of the Constitution outlines those factors that must be taken into account in the Division of Revenue Act. The Constitution requires that an Act of Parliament (Division of Revenue Act) provide for the equitable division of revenue raised nationally amongst the three spheres of government.

28. This requirement is taken up in the legal aspects of the Division of Revenue but relative to the requirements as specified in the constitution the Act over legislates making it difficult to comply with the requirements thereof.

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Data Concerns

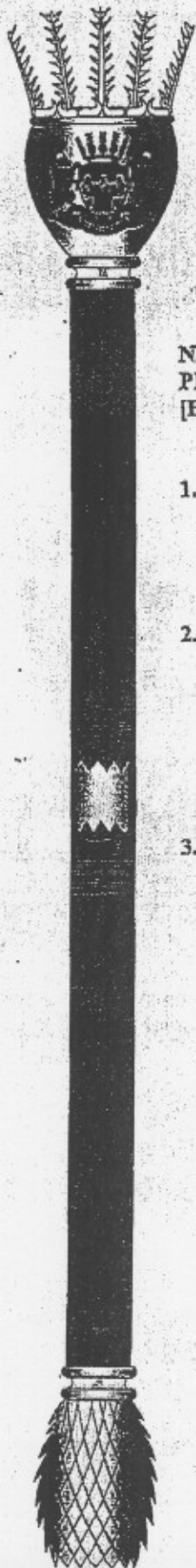
29. The relevance of data utilised in determining the allocation of funds from the national sphere of government to provinces, both via the equitable share and conditional grants is of concern. This is particularly so in the light of the fact that the data which is used is a few years old. It is used to inform the "forward-looking" MTEF, which may make it further outdated. This includes with respect to statistics on inward immigration and settlement patterns.

PP. 

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8 MARCH 2006

Limpopo Legislature

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NEGOTIATING MANDATE OF THE PORTFOLIO COMMITTEE ON PROVINCIAL TREASURY ON THE DIVISION OF REVENUE BILL, [B3-2006]

1. INTRODUCTION

The Division of Revenue Bill, 2005 [B3-2006] was referred to the Legislature by the NCOP and the Legislature in turn referred it to the Portfolio Committee on Provincial Treasury on 17 February 2006 for consideration and inputs.

2. PURPOSE OF THE BILL

The Bill is a section 76 and seeks to provide for the equitable division of revenue anticipated to be raised nationally among national, provincial and local spheres of government for the 2006/7 financial year and the responsibilities of all three spheres pursuant to such division; and to provide for matters connected therewith.

3. CONSIDERATION OF THE BILL

The Portfolio Committee on Provincial Treasury was briefed on the principle and provisions of the Bill by the NCOP Permanent Delegate during a Committee meeting held on 20 February 2006. The Committee conducted one public hearing on 09 March 2006 at Bolivia Lodge. It must, however, be noted by this House that the Division of Revenue Bill is introduced on an annual basis.

The NCOP Permanent Delegate briefed the Committee as follows:

The core of the Division of revenue is contained in the seven Schedules in the Bill. The total revenue anticipated nationally is R446, 4 billion for financial year, 1 April 2006. Provinces' share of revenue is R176, 7 billion which is 22 billion rand more than the revised estimate for the last financial year Limpopo Province received 22, 6 billion during this financial year which is 12, 8 percent of the total transfers to all provinces.

There is a major change in the provincial fiscal framework for the 2006 MTEF which is the shift of the social security grant function from the provincial to national sphere of government. The South African Social Security Agency (SASSA) is now in a position to fully administer the social assistance function