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# Submission on the Spatial Planning and Land Use Management Bill

## August 2011

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For an Equitable Sharing of National Revenue

Financial and Fiscal Commission  
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## Introduction and General Observation

The Department of Rural Development and Land Reform has invited comments on the Spatial Development and Land Use Management Bill of 2011 (the Bill). This submission is made in terms of Section 3 (2) (b) (ii) of the Financial and Fiscal Commission Act 25 of 2003 as amended. The Commission welcomes the opportunity to comment on the Bill as it is always critical that recommendations of the Commission are sought whenever legislation of a financial and fiscal nature is tabled.

The Commission welcomes and supports the enactment of this Bill as it provides for a uniform, effective, efficient and integrated regulatory framework for spatial planning, land use and land use management in a manner that promotes the principles of co-operative government and public interest. The bill also provides for and determines development principles, compulsory norms and standards for land use management.

The enactment of this bill is long overdue and its absence has resulted in urban sprawl to some extent. The Commission welcomes this bill in so far as it allows all land development decisions to be based on this legislation and forms the bases of the 'development control' functions.

This Bill replaces the Development Facilitation Act (NO. 67 OF 1995). The DFA was found by the Constitutional Court in 2010 to be invalid in respect to provincial government performing certain planning functions that the court ruled were the preserve of municipalities. The South African land use management system is guided by national and provincial government, but effectively operates at local government level. The strategic spatial development framework is a mandatory component of the integrated development plan, which has regulatory components such as the local town planning scheme and compliance or law enforcement. The spatial development framework (SDF) based on the norms and principles in the DFA provide guidance for private investment and for public infrastructure development. It must also include a capital investment programme that is linked to the local government's fiscal framework. Spatial planning, linked to land use management, can make a major contribution by creating a more efficient urban form that enables a sustainable livelihood (including transport, energy and human settlements).

The Financial and Fiscal Commission in its 2012/13 Submission for the Division of Revenue noted that most South African cities are built at low densities that they cannot support

sustainable human settlements and public transport systems. This pattern gives rise to a dependence on transportation which is costly for the poor in particular. This Bill creates and opportunity to strengthen the sustainability component by ensuring that new developments are orderly and regulated; and that cities are more compact and promote public transport.

In terms of norms and standards, performance zoning can be introduced where new developments and (re)developments must meet certain minimum criteria regarding transport and energy needs and usage. Applications for land use change and rezoning also creates an opportunity to include carbon reducing conditions in approvals.

There are, however, institutional, fiscal and capacity issues that the Commission would like to bring to the attention of the Department in relation to this Bill.

- There are institutional issues facing land management systems, processes and application. These pertain a lack of capacity within municipalities to comprehensively cope with spatial and land management legislation. The lack of capacity occurs in two various forms but pertinent is the staff with appropriate qualifications in land management to deal with demand for human settlements, business and infrastructure development in an orderly and systematic manner. This requires training and development in complex policy and technical areas of land management.
- Other institutional issues are the structure of planning, housing, transport, energy, water and local economic development units within municipalities which are not integrated. This legislation requires that land use is dealt with as an integrated system with feedback loops. There must be a regulatory impact assessment of this legislation and thoroughly prepare for application and implementation.
- The regulatory impact assessment must include the fiscal analysis to implementing this act by both municipalities and provinces. The Bill makes provision for the establishment of the Municipal Planning Tribunals (**Clause 32**) and Provincial Planning Tribunals (Clause 38). Municipal Planning Tribunals will consist of officials in the **full-time service** of the municipality and non-municipal officials. There is not only a financial cost of establishing tribunals but legislation, reporting mechanisms and budget allocations that must be factored in. Regulations must clearly spell out how non-municipal tribunal members' compensation as well as other

operational expenses will be funded, including the intergovernmental fiscal relations between Provincial and Municipal Tribunal on strategic and operational matters.

- Like in the case of Municipal Planning Tribunal, the Bill fails to make a determination on the maximum number of members to serve in a Provincial Planning Tribunal.
- The Bill provides for municipal co-operation (**Clause 37**), where two or more municipalities may, in writing, agree to have a joint Municipal Planning Tribunal. While this is commendable especially in the case of small municipalities, the Bill must be clear on how costs of running such a joint Municipal Planning Tribunal will be shared to avoid conflicts in the future.
- One of the factors to achieve efficient land use is densification (as discussed in the Commission's Annual Submission for the 2012/13 Division of Revenue) which is very low in South African cities. The Bill fails to explicitly make minimum prescriptions on density level/make it compulsory for municipalities to develop necessary minimum density level, monitor and enforce them as one of its objective. This needs to be reconsidered.
- The Bill is silent on how acquisition and development of such land will be funded which is the key issue that needs to be resolved. Otherwise municipalities could easily identify such land which does improve anything if funding is not made available. It is critical to identify strategically located vacant land or underutilised land and for providing access and the use of such land as noted in **Clause 8(iv)**. Such land is a private land and in most cases not owned by the government or municipalities.

The Commission submits that bill is one of the pivotal tools to transform the spatial form of South Africa through proper land use management. The existing land use and spatial framework (including planning schemes and zonings) do not take into cognisance the needs of low-income households and communities and perpetuate low-density cities with high transaction costs. The Commission hopes that this bill will create a spatial framework that takes into account the dynamics of urban, rural, formal and informal dimensional space of the country, and that addresses the needs

poor without constraining the ability of the economically able to contribute to the development of South Africa.

**For and on behalf of the Commission**



**Mr. Bongani Khumalo**  
**Acting Chairperson and CEO**  
**August 2 2011**