



FREE SA

FOUNDATION FOR RIGHTS OF
EXPRESSION AND EQUALITY

14 February 2025

To: Ms Mandy Balie

nsebill@parliament.gov.za

Dear Sir/Madam,

RE: COMMENTS ON THE NATIONAL STATE ENTERPRISES BILL [B1-2024]

I refer to the invitation for comments on the National State Enterprises Bill [B1-2024], as published by the Portfolio Committee on Planning, Monitoring and Evaluation and would like to submit the following comments on behalf of the Foundation for Rights of Equality and Expression (Free SA). Free SA is an organisation dedicated to upholding true democratic principles and empowering South African citizens to meaningfully participate in decisions that shape their futures. Free SA is a registered non-profit company (registration number: 2024/631561/08).

We appreciate the opportunity to raise the concerns regarding the Bill which concerns are shared by millions of South Africans who have witnessed the repeated failures of state-owned enterprises (SOEs), the devastating effects of mismanagement and corruption, and the ongoing financial burden placed on taxpayers to bail out failing entities. The Bill, rather than addressing these long-standing issues, entrenches further state control, increases the risk of political interference, and lacks a clear strategy for financial sustainability and market liberalisation.

Free SA submits this submission on behalf of its supporters as well as the 3 of individuals for submitted public comment on the Bill through our public participation facilitation process.

1. SUMMARY OF SUBMISSION

In this submission, Free SA raised the following five concerns regarding the Bill:

- 1) The Bill causes excessive centralisation of power and therefore increases the risk of political interference.
- 2) The exemption from the Public Finance Management Act (PFMA) leaves room for future abuse and corruption.
- 3) The Bill fails to address or even acknowledge the structural problems in SOEs.
- 4) The Bill creates for more nationalisation instead of privatisation even after it has become abundantly clear that nationalisation has failed South Africans and the Bill lacks a clear

privatisation strategy and measures to ensure market liberalisation that is desperately needed in South Africa.

- 5) The Bill will cause an increased financial burden on taxpayers

Each of these concerns are addressed and elaborated upon below.

2. GENERAL COMMENTS

The Bill Causes Excessive Centralisation of Power and Increases the Risk of Political Interference

The National State Enterprises Bill proposes the creation of a single State Asset Management SOC Ltd (SAMSOC) to consolidate South Africa's major state-owned enterprises (SOEs) under one centralised holding company. This piece of legislation grants sweeping control over critical economic sectors—such as energy, transport, and communications—to a single entity, with the President as the ultimate authority. By concentrating ownership and decision-making within the executive branch, the Bill eliminates essential checks and balances, increasing the risk of political interference in the management of SOEs.

One of the key lessons from the state capture era is that political control over SOEs creates a fertile environment for corruption, mismanagement, and patronage networks. The Zondo Commission detailed how excessive state influence allowed individuals with political connections to manipulate procurement processes, siphon public funds, and cripple key institutions like Eskom and Transnet. Instead of introducing robust governance reforms to prevent similar abuses, this Bill repeats the very mistakes that led to state capture—placing multiple critical SOEs in one structure that can easily be influenced by political elites.

Furthermore, the Bill diminishes the role of Parliament in overseeing SOEs by shifting control directly to the executive. While Parliament currently plays a role in scrutinising state entities, this new structure weakens transparency by making the President the sole representative of the shareholder. This not only erodes public accountability but also enables the ruling party of the day to use state assets for political gain, whether through strategic appointments, preferential contracts, or financial bailouts ahead of elections.

Globally, successful SOEs operate with independence from direct political control, with boards and executives appointed based on merit rather than political loyalty. The Bill, however, fails to introduce safeguards to protect SOEs from undue political influence. Instead of adopting best practices that separate government ownership from day-to-day management, it deepens political entanglement by giving the President significant control over appointments and strategic decisions.

A decentralised and market-driven approach would be far more effective in reforming South Africa's struggling SOEs. Rather than centralising power within the state, competition and private-sector participation should be encouraged to improve efficiency, reduce political interference, and protect taxpayers from endless bailouts. By ignoring these realities, the Bill risks entrenching the very dysfunction it claims to address, further jeopardising South Africa's economic stability.

The Exemption from the Public Finance Management Act (PFMA) Leaves Room for Future Abuse and Corruption

One of the most alarming aspects of the National State Enterprises Bill is its exemption of SAMSOC and its subsidiaries from most provisions of the Public Finance Management Act (PFMA). The PFMA is a cornerstone of financial governance in South Africa, ensuring that public funds are managed transparently, responsibly, and in the public interest. By removing SAMSOC from the PFMA's oversight, the Bill weakens financial accountability and creates a dangerous loophole for corruption and wasteful expenditure.

The PFMA exists to prevent the misuse of state resources by setting clear financial management rules, including procurement procedures, reporting requirements, and audit obligations. Historically, SOEs like Eskom and Transnet have struggled with financial mismanagement, irregular spending, and procurement fraud, even under the PFMA's strict guidelines. Exempting SAMSOC from these rules removes one of the few safeguards left to prevent large-scale financial misconduct, leaving billions of rands in state assets vulnerable to abuse.

This exemption is particularly concerning given South Africa's history of state capture and financial scandals. The Zondo Commission highlighted how political interference and poor governance allowed billions to be looted from SOEs through manipulated contracts and unlawful transactions. Without PFMA oversight, SAMSOC could become a financial black hole, where politically connected individuals control massive resources without proper checks on their spending and decision-making. The lack of transparency will also make it more difficult for Parliament and the public to scrutinise how taxpayer funds are being used.

Furthermore, the Bill does not introduce alternative financial oversight mechanisms to replace the PFMA, leaving a regulatory vacuum in its place. While it does provide for annual reporting and financial audits, these measures are inadequate compared to the PFMA's strict controls on procurement, budgeting, and debt management. The Bill essentially allows SAMSOC to operate with fewer financial restrictions than most other government entities, despite being responsible for managing billions in public assets. This is a clear step backward for financial governance in South Africa.

If the government were truly committed to reforming SOEs and ensuring their financial sustainability, it would strengthen financial oversight instead of weakening it. Rather than exempting SAMSOC from the PFMA, a more market-driven approach should be adopted, with stricter financial controls, increased transparency, and greater private-sector involvement to limit the financial burden on taxpayers. Without these safeguards, this Bill will only deepen the crisis of corruption and mismanagement in South Africa's state-owned enterprises.

The Bill Fails to Address or Even Acknowledge the Structural Problems in SOEs

South Africa's SOEs have been in crisis for over a decade, plagued by financial mismanagement, political interference, corruption, and operational inefficiencies. The National State Enterprises Bill, however, fails to acknowledge or address these deep-rooted structural problems, instead proposing further state control as a supposed solution. By centralising SOEs under the SAMSOC without implementing real governance reforms, the Bill ignores the fundamental reasons for the failure of SOEs and merely reshuffles their structure.

A major structural problem in SOEs is their over-reliance on government bailouts. Entities like Eskom, SAA, and Transnet have received billions in taxpayer-funded support, yet continue to operate at a loss due to inefficiency, mismanagement, and corruption. The Bill does not introduce measures to ensure financial sustainability or operational independence for these entities. Instead of exploring solutions such as cost-cutting, competitive restructuring, or private-sector

involvement, the Bill simply transfers ownership to a new holding company—a move that does nothing to address the financial black hole many SOEs have become.

Another critical failure of the Bill is its lack of governance reforms to protect SOEs from political interference. The Zondo Commission detailed how political meddling in board appointments, procurement processes, and executive decision-making crippled key SOEs and allowed corruption to flourish. Yet, the Bill offers no clear mechanisms to prevent future interference, ensure merit-based leadership appointments, or improve corporate governance standards. Instead, it gives the President control over SOE oversight, further entrenching the very political influence that contributed to their collapse.

Additionally, the Bill ignores the issue of SOE inefficiency and lack of competitiveness. Many of South Africa's state-owned companies operate as government-protected monopolies, shielded from competition despite their declining performance. Eskom, for example, has struggled to provide a stable power supply, yet the Bill does not consider market liberalisation or allowing independent power producers to compete on an equal footing. Without introducing efficiency-driven reforms, South African consumers and businesses will continue to suffer from poor service delivery and rising costs due to SOE failures.

The failure to address these fundamental issues suggests that the Bill is not truly aimed at fixing SOEs, but rather consolidating political and financial control over them. Instead of repeating failed nationalisation policies, South Africa needs a bold strategy that includes privatisation, public-private partnerships, and independent governance mechanisms. Without these crucial reforms, the Bill will only perpetuate the dysfunction, inefficiency, and financial decline of SOEs, leaving South Africans to bear the cost of continued failure.

The Bill Expands Nationalisation Instead of Embracing Privatisation and Market Liberalisation

For decades, South Africa's SOEs have been plagued by corruption, inefficiency, and financial collapse, requiring continuous government bailouts at the expense of taxpayers. Despite overwhelming evidence that state control has failed to deliver sustainable and competitive enterprises, the National State Enterprises Bill doubles down on nationalisation rather than exploring privatisation or market liberalisation as viable alternatives. Instead of reducing government involvement in business, the Bill further entrenches state ownership, ignoring the clear economic benefits that private-sector participation could bring.

The Bill proposes the consolidation of major SOEs under a single state-controlled holding company, SAMSOC, rather than considering strategies to reduce state ownership and allow for competitive markets. This approach contradicts global trends, where governments facing similar challenges have chosen to privatise failing state enterprises or introduce competition to improve efficiency. Countries like Germany and the United Kingdom have successfully transitioned key sectors—such as energy, telecommunications, and transport—towards private-sector-led models, leading to improved service delivery, job creation, and economic growth. South Africa, however, remains fixated on an outdated state-dominated approach that has consistently failed.

By excluding a clear privatisation strategy, the Bill misses an opportunity to attract private investment, increase efficiency, and reduce the financial burden on the state. Even basic international benchmarking would have confirmed that this approach is not the approach taken by countries where SOEs are viable and successful. SOEs like Eskom, SAA, and Transnet have proven unable to operate efficiently under state control, yet the Bill does not provide a roadmap for partial

or full privatisation—even in cases where SOEs are financially unsustainable. Without allowing private-sector participation, the government is essentially committing South Africans to endless bailouts, higher costs, and declining services instead of fostering a competitive economy that can create jobs and stimulate growth.

Another critical failure of the Bill is its lack of market liberalisation measures. Instead of encouraging competition, investment, and innovation, the Bill reinforces state monopolies in key industries. Eskom, for example, has consistently failed to provide reliable electricity, yet the Bill does not introduce measures to open the energy sector to more independent power producers (IPPs). Similarly, Transnet's inefficiency has crippled South Africa's transport and logistics sector, yet the Bill ignores the potential benefits of allowing private rail and port operators to compete in the market. This refusal to embrace market-friendly reforms condemns South Africa to continued economic stagnation and poor service delivery.

A market-driven approach would not only increase efficiency and reduce corruption but also create much-needed employment opportunities by unlocking new business and investment potential. The government's insistence on greater state control instead of market-driven reforms is a step in the wrong direction. Instead of expanding nationalisation, the Bill should provide a clear framework for privatisation, competition, and deregulation, allowing South Africa's economy to benefit from innovation, efficiency, and sustainable economic growth.

If the goal is truly to reform SOEs and ensure their long-term success, the government must shift away from ideology and embrace practical economic solutions. The continued expansion of nationalisation, as envisioned in this Bill, will only deepen the country's economic crisis. The state's role should be to facilitate economic growth by creating an environment where businesses can thrive—not to act as the owner and operator of failing enterprises. Without a serious shift towards privatisation and market liberalisation, South Africa will remain trapped in a cycle of inefficiency, financial mismanagement, and economic decline.

The Bill Will Cause an Increased Financial Burden on Taxpayers

South Africa's SOEs have already cost taxpayers billions of rands in bailouts, debt guarantees, and operational losses, yet the National State Enterprises Bill proposes further state control without providing any sustainable funding model. By consolidating multiple struggling SOEs under a single government-controlled entity, SAMSOC, the Bill fails to outline how these enterprises will become financially viable, leaving taxpayers to foot the bill for continued inefficiency and mismanagement. Instead of reducing the financial burden on South Africans, the Bill effectively commits the country to more bailouts, more debt, and more economic strain.

One of the biggest financial risks in the Bill is that it does not specify how SAMSOC will fund itself without relying on state resources. South Africa's SOEs are already heavily indebted, with Eskom, Transnet, and SAA among the worst financial offenders. These entities have repeatedly required government bailouts, drawing funds away from essential services such as healthcare, education, and infrastructure development. Without introducing private-sector investment, revenue-generating strategies, or financial accountability measures, SAMSOC is likely to become another drain on public funds, worsening the country's already fragile fiscal position.

A key concern is that the Bill does not limit the state's financial obligations towards SOEs, meaning that when these enterprises inevitably fail to turn a profit, the government will be forced to step in—again, using taxpayer money. The Bill also does not clarify whether SAMSOC will have borrowing powers, raising fears that it may take on even more debt backed by government

guarantees, further increasing the country's risk of default and higher borrowing costs. South Africa's credit rating has already suffered due to excessive SOE debt, and this Bill does nothing to reassure investors or international credit agencies that fiscal discipline will be restored.

The financial burden on taxpayers is also linked to the lack of competition and market liberalisation in the Bill. By reinforcing state monopolies, particularly in sectors such as energy and transport, the Bill prevents market-driven efficiency improvements, meaning that SOEs will continue to require public funding to cover their inefficiencies. A market-friendly approach that encourages privatisation or public-private partnerships could lessen the financial burden on taxpayers by allowing SOEs to operate profitably and sustainably. However, the Bill does the opposite—it cements government dependence on failing enterprises and blocks competition that could improve service delivery.

The continued over-reliance on public funds to sustain failing SOEs is simply unsustainable, particularly in a country with high unemployment, a growing budget deficit, and increasing poverty levels. Taxpayers cannot afford to continuously rescue failing enterprises while the private sector is excluded from playing a role in revitalising and reforming these industries. Instead of introducing yet another government-controlled entity, the state should be reducing its financial exposure, encouraging private-sector investment, and ensuring that SOEs operate on a self-sustaining basis.

Ultimately, this Bill represents a major financial risk for South Africans, as it effectively locks the country into an endless cycle of government bailouts, debt accumulation, and economic stagnation. Without significant amendments to introduce financial accountability, private-sector participation, and fiscal discipline, the Bill will only worsen South Africa's economic crisis, leaving taxpayers to pay for the failures of government mismanagement.

3. PUBLIC INPUT

As part of its commitment to amplifying the voices of ordinary South Africans, Free SA conducted a public opinion poll to assess the level of support for the National State Enterprises Bill. The results were overwhelmingly clear—99.99% of respondents opposed the Bill. This resounding rejection demonstrates that the South African public does not believe the Bill will resolve the longstanding failures of SOEs but will instead worsen their inefficiencies, deepen corruption, and increase political interference.

Respondents expressed three primary concerns about the Bill:

- 1.** The centralisation of power over SOEs – Participants raised serious concerns that consolidating multiple struggling SOEs under a single state-controlled holding company (SAMSOC), with the President as the sole shareholder representative, would concentrate excessive power in the executive branch. Given South Africa's history of state capture and political interference in SOEs, the public strongly opposes a system that could increase opportunities for government misuse and further mismanagement of public resources.
- 2.** The failure to promote privatisation and competition – A significant number of respondents highlighted that South Africa's SOEs have repeatedly failed under state control, requiring continuous bailouts that divert funds from essential public services. Instead of perpetuating state monopolies, the public supports privatisation, public-private partnerships, and market liberalisation to bring in private-sector expertise, competition, and investment, which would improve efficiency, service delivery, and financial sustainability.

- 3.** The increased risk of corruption and abuse – With the Bill removing key financial oversight mechanisms such as the Public Finance Management Act (PFMA), respondents were deeply concerned that SAMSOC could become a breeding ground for corruption and unchecked financial mismanagement. Many pointed to the findings of the Zondo Commission, which demonstrated how SOEs were used as vehicles for looting and political patronage. Without strong governance reforms and independent oversight, the public fears that this Bill will enable another wave of large-scale corruption at the expense of taxpayers.

The public's overwhelming opposition to the Bill underscores the urgent need for a different approach to SOE reform—one that prioritises accountability, private-sector participation, and financial sustainability rather than further state control. The government cannot afford to ignore the voices of South Africans, who have suffered the consequences of failing SOEs for too long. Free SA urges Parliament to reject this Bill and instead engage in meaningful consultation with the public and experts to develop a workable, transparent, and sustainable solution for South Africa's SOEs.

4. SPECIFIC COMMENTS

#	Reference	Title	Relevant text	Comment
	Clause 6 (Page 5)	Establishment of Holding Company	"(3) The State is the sole shareholder of the holding company and the President is the representative of the shareholder..."	<i>This clause centralises control of SOEs under the President, increasing the risk of political interference and weakening independent governance. It fails to introduce mechanisms to ensure merit-based decision-making and insulation from executive control. Instead, the Bill should promote decentralisation and professional oversight to reduce the risk of mismanagement and state capture.</i>
	Clause 8 (Page 6) X)	Shareholder Powers and Duties	"(1) The shareholder must promote and support the functions of the holding company and table a report annually in Parliament on the commercial	<i>While annual reporting to Parliament is positive, this clause does not provide sufficient transparency or financial oversight. The Bill fails to include strong</i>

			sustainability, developmental impact and material risks of the investment in the holding company."	<i>financial governance mechanisms, especially given that the PFMA will not apply. Instead of vague obligations, the Bill should mandate detailed, publicly available financial reports audited by independent entities.</i>
	Clause 9 (Page 6) X)	Powers, Functions and Duties of the Board	"(1)(d) exercise the rights and observe the restrictions as a sole or majority shareholder of any subsidiaries of the holding company on behalf of the State."	Granting SAMSOC sole or majority shareholding over SOEs without clear financial and governance controls concentrates risk and increases taxpayer liability. There is no mention of private-sector participation, alternative funding strategies, or privatisation plans to reduce state dependency. Free SA recommends amending this clause to explicitly allow for private-sector investment and competition.

	<p>Clause 14 (Page 8)</p>	<p>Audit of Holding Company</p>	<p>"Despite section 90(1) of the Companies Act, the Auditor-General must, in accordance with the Public Audit Act, 2004 (Act No. 25 of 2004), ensure that the financial statements of the holding company and its subsidiaries are audited each year."</p>	<p>While annual audits are essential, removing PFMA oversight weakens financial accountability. This clause does not specify how irregular expenditure, financial mismanagement, or corruption will be addressed. There should be explicit provisions for forensic audits in cases of financial mismanagement and clear accountability measures for executives and board members.</p>
	<p>Clause 17 (Page 9)</p>	<p>Legal Succession to Holding Company</p>	<p>"(1) If the shareholder has determined that a state enterprise must be transferred in terms of section 16(4)(b), the President must by Proclamation in the Gazette, on a stipulated date— (b) transfer the shareholding in a state enterprise to the holding company."</p>	<p>The automatic transfer of SOEs to SAMSOC ignores financial viability and operational challenges. There is no due diligence requirement to assess whether an SOE should be restructured, privatised, or liquidated instead of simply being absorbed into</p>

				SAMSOC. This clause should be revised to include a financial sustainability review before any SOE is transferred.
	Clause 22 (Page 11)	Application of Companies Act and Public Finance Management Act (PFMA)	"(3) Except for sections 47 and 48, the Public Finance Management Act does not apply to the holding company or its subsidiaries."	Exempting SAMSOC from the PFMA removes essential financial safeguards, increasing the risk of corruption and mismanagement. The Bill does not introduce any equivalent financial controls to replace the PFMA. Free SA strongly opposes this exemption and recommends reinstating full PFMA compliance or introducing a stronger independent financial oversight mechanism.
	Schedule A (Page 12)	State Enterprises to be Transferred	List includes Eskom, Transnet, SAA, South African Post Office, Denel, and others.	These SOEs have already proven to be financially unsustainable under state control, requiring repeated bailouts.

		to Holding Company		Instead of automatically transferring them to SAMSOC, the Bill should provide a clear roadmap for privatisation, public-private partnerships, or commercial restructuring. Failing to do so will perpetuate financial losses at the expense of taxpayers.
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5. CONCLUSION

The National State Enterprises Bill [B1-2024] fails to address the core structural, financial, and governance challenges that have led to the collapse of South Africa's SOEs. Instead of introducing reforms that promote efficiency, transparency, and accountability, the Bill further entrenches state control, political interference, and financial mismanagement. By centralising SOEs under SAMSOC, exempting them from the PFMA, and failing to create a pathway for privatisation and market liberalisation, the Bill risks deepening the financial and operational crises within SOEs, increasing the burden on taxpayers, and discouraging investment.

The Bill also ignores global best practices, where governments facing similar challenges have successfully privatised failing SOEs, introduced competition, and implemented strict governance reforms to ensure financial sustainability. Instead, this Bill doubles down on failed policies, perpetuating the cycle of inefficiency, corruption, and economic stagnation. The South African economy cannot afford another poorly designed state intervention that limits growth, erodes investor confidence, and forces taxpayers to subsidise failing enterprises indefinitely.

Free SA submits that the Bill must be rejected in principle and as a whole, as it does not serve the interests of the South African public or the broader economy. Instead, a new legislative framework should be developed, one that prioritises market-driven reforms, financial sustainability, and independent governance of SOEs. Such an approach should include partial or full privatisation, increased private-sector participation, and transparent oversight mechanisms to ensure that SOEs operate efficiently, competitively, and without undue political influence.

Should there be an opportunity for oral submissions, Free SA kindly requests the opportunity to also make oral submissions.

Yours sincerely,

Paul Maritz

Executive Director