

GENERAL NOTICE

NOTICE 689 OF 2005

DEPARTMENT OF TRANSPORT

PUBLICATION FOR PUBLIC COMMENTS: TRANSPORT AGENCIES GENERAL LAWS AMENDMENT BILL, 2005

The above-mentioned draft Bill is hereby published for public comments. Interested parties or persons are hereby invited to submit written comments on the draft bill by no later than the 6th June 2005. Submissions should be marked for the attention of Adv. AM Masombuka and may be posted to the Director-General, Department of Transport, Private Bag X 193, Pretoria, 0001, transmitted by facsimile to (012) 309-3326 or by e-mail to masombuA@dot.gov.za

REPUBLIC OF SOUTH AFRICA

TRANSPORT AGENCIES GENERAL LAWS AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No. 27566 of 6 May 2005) (The English text is the official text of the Bill)

(MINISTER OF TRANSPORT)

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend—

- the Cross Border Road Transport Act, 1998, so as to provide for the appointment of Board members and the Chief Executive Officer by the Minister;
- to amend the South African Maritime Safety Authority Act, 1998, so as to provide for the appointment of the Board and the Chief Executive Officer by the Minister; to provide for representation of the Department of Transport on the Board, to facilitate the filling of an occasional vacancy on the Board; and to allow the Minister to temporarily extend the term of office of an outgoing Board, if necessary;
- to amend the South African National Roads Agency Limited and National Roads Act, 1998, so as to provide for the appointment of the Chief Executive Officer by the Minister;

- to amend the Transport Appeal Tribunal Act, 1998, so as to provide for the appointment of the members of the Tribunal by the Minister;
 - to amend the South African Civil Aviation Authority Act, 1998, so as to provide for representation of the Department of Transport on the Board and, for the appointment of the Chief Executive Officer by the Minister; and to facilitate the filling of an occasional vacancies on the Board;
 - to amend the Road Traffic Management Corporation Act, 1999, so as to provide for the appointment of Board members by the Shareholders Committee;
 - to amend the National Railway Safety Regulator Act, 2002, so as to provide for the appointment of the Board by the Minister and to allow the Minister to temporarily extend the term of office of an outgoing Board, if necessary;
- and to provide for matters connected therewith.

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

Amendment of section 5 of Act 4 of 1998

1. Section 5 of the Cross-Border Road Transportation Act, 1998, is hereby amended by—

- (a) the substitution in subsection (2) for paragraph (c) of the following paragraph:

"(c) not more than eight other members of whom not more than—

- (i) two must be appointed on account of their expertise in cross-border road transport of freight; and
- (ii) two must be appointed on account of their expertise in cross-border road transport of passengers." and

- (b) the substitution for subsection (3) of the following subsection:

"(3) The members of the Board contemplated in subsection (2)(c)(i) and (ii) must be persons who are not employed by the State."

Substitution of section 14 of Act 4 of 1998

2.. The following section is hereby substituted for section 14 of the Cross-Border Road Transportation Act, 1998:

"Staff of Agency

14. (1) (a) The Minister must appoint a person as chief executive officer of the Agency after consultation with the Board.

(b) The Agency's day to day business and operations are under the control of the Chief Executive Officer.

(2) The Chief Executive Officer must subject to the approval of the Board appoint such other staff as may be necessary to provide the required administrative, secretarial, research and technical assistance to the Agency and the Board.

(3) The staff of the Agency receives such remuneration allowances and other employment benefits as the Board may determine in consultation with the Minister and the Minister of Finance."

Amendment of section 12 of Act 5 of 1998

4. Section 12 of the South African Maritime Safety Authority Act 1998, is hereby amended by–

- (a) the insertion in subsection (1) after paragraph (b) of the following paragraph:

"(bA) the Director-General of the Department of Transport, or any other senior official in that Department designated by the Director-General for that particular purpose:";

- (b) the substitution in subsection (3) for paragraph (a) of the following paragraph:

"(a) are appointed by the Minister **[from a list of names of persons which, at the Minister's request by notice in the**

media, have been submitted to him or her within the period specified in the notice by any person or body having an interest in the maritime or related industry];

and"; and

- (c) by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs, respectively:

"(a) at least one member must be a person with substantial experience in the shipping sector;

(b) at least one member must be a person with substantial experience in labour issues relating to the shipping sector."

Substitution of section 13 of Act 5 of 1998

5. The following section is hereby substituted for section 13 of the South African Maritime Safety Authority, 1998:

"Period of office of members

13. (1) Subject to this Chapter, a member holds office for a period specified in the letter of appointment but not exceeding five years.

(2) A member may only be appointed for two consecutive terms.

(3) The Minister may temporarily extend the term of office of Board members immediately before the expiry of their term of office for such a period as may be necessary to finalise the appointment of a new board."

Amendment of section 15 of Act 5 of 1998

6. Section 15 of the South African Maritime Safety Authority Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) **[Subject to section 12(2) and (4)]** A member may not engage in any paid employment that will conflict with the proper performance of his or her functions as a member."

Amendment of section 22 of Act 5 of 1998

7. Section 22 of the South African Maritime Safety Authority Act, 1998, is hereby amended by-

(a) the substitution for subsection (1) of the following subsection:

"(1) The Minister must appoint the Chief Executive Officer of the Authority on such terms and conditions as the Minister may determine in writing after consultation with the Board." and

- (b) the deletion of subsections (5) and (6).

Repeal of section 24 of Act 5 of 1998

8. Section 24 of the South African Maritime Safety Authority Act, 1998, is hereby repealed.

Substitution of section 25 of Act 5 of 1998

9. The following section is hereby substituted for section 25 of the South African Maritime Safety Authority Act, 1998:

"Resignation

25. The Chief Executive Officer may resign by notice in writing to the Board and the Minister."

Repeal of section 11 of Act 7 of 1998

10. Section 11 of the South African National Roads Agency Limited and National Roads Act, 1998, is hereby repealed.

Amendment of section 12 of Act 7 of 1998

11. Section 12 of the South. African National Roads Agency Limited and National Roads Act, 1998, is hereby amended by—

(a) the substitution for subsection (2) of the following subsection:

"(2) The Board consists of—

- (a) the Chairperson;
- (b) the Director General of the Department of Transport or any other senior officer of the Department of Transport, designated by the Director General for that particular purpose;
- (c) a senior officer of the Department of Finance nominated by the Director General of that Department;
- (d) the Chief Executive Officer. and
- (e) four other persons having special qualifications, skills expertise or experience in matters concerning national roads or the business or operations of the Agency. "; and

(b) the substitution for subsection (3) of the following subsection:

"(3) The members of the Board contemplated in subsection (2)(a and (e are appointed by the Minister. ".

Amendment of section 14 of Act 7 of 1998

12. Section 14 of the South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended by –

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"[An appointed] member of the Board vacates office—"; and

- (b) the substitution in subsection (3) for paragraph (a) of the following paragraph:

"(a) A vacancy in the **[office of the appointed member] Board** must be filled **[by the Minister]** as soon as possible through the appointment of another member who meets the requirements stipulated in **[section 12(3)] section 12** for the office that has become vacant." .

Amendment of section 19 of Act 7 of 1998

13. Section 19 of the South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) **[Subject to section 11(2), the members of the Board mentioned in section 12(3)] The Minister must after consultation**

with the Board appoint as Chief Executive Officer of the Agency a fit and proper person who is suitable for that office."

Amendment of section 22 of Act 7 of 1998

14. Section 22 of the South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Chief Executive Officer, with the **[Board's]** Minister's approval, may delegate any of the powers, functions or duties of that office in terms of this Act, to any employee of the Agency."

Amendment of section 4 of Act 39 of 1998

15. Section 4 of the Transport Appeal Tribunal Act, 1998, is hereby amended by—

- (a) the deletion of paragraph (b) of subsection (2); and
- (b) the deletion of subsection (3).

Amendment of section 8 of Act 40 of 1998

16. Section 8 of the South African Civil Aviation Authority Act, 1998, is hereby amended by—

- (a) the substitution in subsection (2)(a) for subparagraph (ii) of the following subparagraph:

"(ii) one must be the Director-General of the Department of Transport or any other senior officer in the Department of Transport designated by the Director-General for that particular purpose."; and

- (b) the deletion of subsection (6).

Amendment of section 9 of Act 40 of 1998

17. Section 9 of the South African Civil Aviation Authority Act, 1998, is hereby amended by—

- (a) the deletion of the proviso to subsection (1); and
(b) the substitution for subsection (7) of the following subsection:

"(7) If an appointed member dies or vacates his or her office before the expiry of the period for which he or she was appointed, the Minister may appoint another person to fill the vacancy for the remaining portion of the period for which that member was appointed **[but the procedure contemplated in section 8 (6) does not apply in respect of an appointment in terms of this subsection]**".

Amendment of section 11 of Act 40 of 1998

18. Section 11 of the South African Civil Aviation Authority Act, 1998, is hereby amended by-

- (a) the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) The Minister appoints the **[first]** Chief Executive Officer of the Authority **[and thereafter the appointed members of the Board appoint the Chief Executive Officer of the Authority]** after consultation with the Board. "; and

- (b) the substitution for subsection (2) of the following subsection:

"(2) The Chief Executive Officer holds his or her office for a period~~[,]~~ not exceeding five years, on the conditions, including conditions providing for remuneration and allowances, as the Minister **[or the Board, as the case may be,]** determines upon his or her appointment."

Amendment of section 8 of Act 20 of 1999

19. Section 8 of the Road Traffic Management Corporation Act, 1999, is hereby amended by the deletion of subsection (10).

Amendment of section 8 of Act 16 of 2002

20. Section 8 of the National Railway Safety Regulator Act, 2002, is hereby amended by—

- (a) the substitution in subsection (5) for paragraph (b) of the following paragraphs:

"(b) The board consists of—

- (i) the Chief Executive Officer;
- (ii) the Directors General of the Departments of Transport Labour and Safety and Security; and
- (iii) subject to paragraph (a) not more than nine other persons representing the railway industry, organised labour and the community.

(c) A Director General contemplated in paragraph (b)(ii) may designate any senior official in his or her department to act in his or her stead as member of the board."

- (b) the deletion of subsection (7);
- (c) the addition to subsection (13) of the following paragraph:

"(c) The Minister may extend the term of office of any member of the board immediately before the expiry of the members term of office for such period as may be necessary to finalise the appointment of a new board." and

(d) the substitution in subsection (14) for paragraph (a) of the following paragraph:

"(a) If a director dies or vacates office, the Minister may[, **subject to subsection (7),**] appoint another person as a director."

Short title

21. This Act is called the Transport Agencies General Laws Amendment Act, 2005.