

NATIONAL ROADS AMENDMENT ACT

PRESIDENT'S OFFICE

No. 675. 19 April 1996

NO. 24 OF 1996: NATIONAL ROADS AMENDMENT ACT, 1996.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

GENERAL EXPLANATORY NOTE:

Words in ***bold italics*** indicate omissions from existing enactments.

Words in *italics* indicate insertions in existing enactments.

ACT

To amend the National Roads Act, 1971, so as to amend and insert certain definitions; to provide for the application of the Act; to further regulate the National Road Fund; to further regulate assets acquired from the fund; to further regulate the declaration of a national road; to further regulate the general powers, functions and duties of the South African Roads Board; to provide for the delegation of certain powers and functions of the Board; to amend certain provisions in view of the Constitution of the Republic of South Africa, 1993; to provide for the charging of a certain compensation; to further regulate the limitation in respect of the institution of actions; to repeal or amend certain obsolete provisions and expressions; and to further regulate the commencement of the National Roads Amendment Act, 1992; to amend the South African Roads Board Act, 1988, so as to further regulate the performance of the executive and administrative work of the Board; and to provide for matters connected therewith.

(English text signed by the President.) (Assented to 16 April 1996.)

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

Amendment of section 1 of Act 54 of 1971, as amended by section 1 of Act 5 of 1982, section 1 of Act 79 of 1983 and section 1 of Act 100 of 1992

1. Section 1 of the National Roads Act, 1971 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the deletion of the definition of "Administrator";

(b) by the substitution for the definition of "local authority" of the following definition:

"local authority" means a local government body contemplated in section 1 (1) of the Local Government Transition Act, 1993 (Act No. 209 of 1993);"

(c) by the substitution for the definition of "national road" of the following definition:

" 'national road' means a road or route declared a national road under section 4(1)(a), and includes a *toll road as defined in this Act, as well as a part of such road or route* ; ";

(d) by the insertion after the definition of "point of intersection" of the following definitions:

" '*Premier*' means the premier of a province, or a member of the Executive Council designated by the premier concerned for the purposes of the administration of this Act;

'*province*' means a province established by section 124(1) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);";

(e) by the substitution for the definition of "regulation" of the following definition:

" 'regulation' means **except in section 19** a regulation made under section 20;"; and

(f) by the substitution for the definition of "toll gate" of the following definition:

'toll gate' means a structure on a toll road where toll is payable under this Act *or any electrical or mechanical device on a toll road for recording the liability to pay toll, or any combination of such structure and such device*;".

Insertion of section 1A in Act 54 of 1971

2. The following section is hereby inserted after section 1 of the principal Act:

"Application of Act

1A. This Act shall apply throughout the Republic to all national roads declared as such under section 4(1), including inter-provincial bridges on such roads, as well as all interstate bridges whether such bridges are part of a national road or not."

Amendment of section 2 of Act 54 of 1971, as amended by section 43 of Act 62 of 1973, section 7 of Act 72 of 1975, section 20 of Act 102 of 1976, section 1 of Act 38 of 1978, section 1 of Act 3 of 1979, section 1 of Act 93 of 1981, section 1 of Act 10 of 1983, section 2 of Act 79 of 1983, section 1 of Act 58 of 1985 and section 2 of Act 100 of 1992

3. Section 2 of the principal Act is hereby amended-

(a) by the substitution for paragraphs (b) and (bA) of subsection (1) of the following paragraphs:

"(b) all **other** moneys made available for the fund by parliament;

(bA) all moneys paid, *subject to the provisions of section 9(4A)*, by way of toll in terms of **section 9** *this Act*;";

(b) by the substitution for paragraph (f) of subsection (1A) of the following paragraph:

"(f) If any State Department ***including the South African Transport Services, any provincial administration and the Department of Posts and Telecommunications, or the government of any territory in respect of which a legislative council has in terms of the National States Constitution Act, 1971 (Act No. 21 of 1971), been established, or the Armaments Corporation of South Africa, Limited, or any province or other body approved by the Minister,*** from whom a levy has been collected in terms of this subsection, proves to the satisfaction of the Board that any portion of distillate fuel in respect of which that department, ***government province or corporation other body*** has paid a levy, has been used to propel any diesel locomotive, the relevant body may claim from the Board a refund thereof from the fund, and the Board shall, if the body has followed the procedure determined by the Board for the lodging of the claim, refund the amount due to the body concerned from the fund.";

(c) by the deletion of paragraph (g) of subsection (1A);

(d) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

"(a) The Board shall control the fund and shall pay from it, ***except in so far as Parliament may in respect of a particular road or other works specially provide otherwise, and*** subject to the provisions of section 16 of the South African Roads Board Act, 1988 (Act No. 74 of 1988), all expenditure incurred in connection with the exercise or performance of the powers, functions or duties of the Board in terms of this Act or the regulations ***including regulations made under section 19.***";

(e) by the deletion of paragraph (c) of subsection (3);

(f) by the substitution in subsection (3A) for the words preceding paragraph (a) of the following words:

"The Board shall keep, *subject to the provisions of section 9(4A),* a separate account of all moneys received by way of toll or in any other way in respect of a particular toll road and paid into the fund and interest on investments of such moneys, and shall utilize the moneys in that account for-";

(g) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

"(a) defray the cost or part of the cost incurred by ***an Administrator*** a province or local authority in connection with a road or other works which in the opinion of the Board have become necessary as a result of the construction of a national road;"

(h) by the substitution for paragraph (d) of subsection (4) of the following paragraph:

"(d) defray the cost or part of the cost *of the compilation, procurement, composition, publication and distribution* of any publication or publicity material which, in the opinion of the Board, will promote the objects of this Act;"

(i) by the substitution for subsection (7) of the following subsection:

"(7) The Board may ***with the approval of the Minister*** invest moneys in the fund not immediately required by it *with the Corporation for Public Deposits established in terms of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984), or, with the concurrence of the Minister and the Minister of Finance, with any other institution.*"; and

(j) by the substitution for paragraph (a) of subsection (9) of the following paragraph:

"(a) When advances or other payments have been made from the fund to ***an Administrator*** a province or a local authority in pursuance of an agreement contemplated in section 6(2)(b), or section 6(2)(b) as applied by section 6(2A)(b), ***or a consultation contemplated in section 19(2)(b), the Administrator*** the province or the local authority, as the case may be, shall in respect thereof submit annually to the Board, for inclusion in its own accounts, statements of account, which, in the case of a local authority, shall be audited by the auditor of such local authority and supported by his report and the necessary documentary evidence."

Amendment of section 3 of Act 54 of 1971, as amended by section 1 of Act 26 of 1974 and section 1 of Act 66 of 1980

4. Section 3 of the principal Act is hereby amended-

(a) by the substitution for subparagraph (i) of paragraph (a) of subsection (2) of the following subparagraph:

"(i) which was acquired *in terms of the provisions of any other law*, for the purpose of or in connection with a national road before the commencement of this Act against compensation paid wholly from the fund; or";

(b) by the addition of the word "or" at the end of subparagraph (iii) of paragraph (a) of subsection (2); and

(c) by the addition to paragraph (a) of subsection (2) of the following subparagraph:

(iv) which was acquired for the purposes of a road by any authority against compensation paid wholly by that authority and which was subsequently declared a national road under section 4(1)."

Amendment of section 4 of Act 54 of 1971, as amended by section 47 of Act 97 of 1986, section 33 of Act 52 of 1991 and section 3 of Act 100 of 1992

5. Section 4 of the principal Act is hereby amended-

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) The Minister may by notice in the Gazette-

(a) declare any existing road or any route, the boundaries of which have been fixed by survey, to be a national road;

(b) declare that a national road shall be constructed along a route which he shall indicate by specifying in the notice the land over which the road will run or which, in his opinion, will be affected, or will possibly be affected in terms of this Act by the existence of the road if it is declared to be a national road in terms of paragraph (a);

(c) amend or repeat a notice issued under paragraph (a) *or (b)*

(2)(a) A notice under subsection (1) shall only be issued on the recommendation of the Board ***made, subject to the provisions of subsection (5)(b), after consultation*** and with the ***Administrator concurrence of the Premier*** of each province in which the road in question is *or will be* situated ***and, if that road is or will be situated in a territory which by or in terms of an Act of Parliament has been declared to be a self-governing territory within the Republic, with the Director-General: Regional and Land Affairs, in the case where an existing road is to be declared a national road, and after consultation with the relevant Premier if any route is to be so declared.***

(b) If the concurrence referred to in paragraph (a) cannot be obtained, the matter may in terms of section 98(2)(g) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), be referred to the Constitutional Court for its decision, unless the Minister and the Premier concerned mutually agree to settle the dispute in another way."

(b) by the deletion of subsections (3), (4) and (5).

Amendment of section 5 of Act 54 of 1971, as amended by section 2 of Act 66 of 1980, section 2 of Act 93 of 1981 and section 4 of Act 100 of 1992

6. Section 5 of the principal Act is hereby amended-

(a) by the substitution for paragraphs (b), (c) and (cA) of subsection (l) of the following paragraphs, respectively:

"(b) to conduct on, or below the surface of, or in connection with, any land, any survey or investigation which the Board deems desirable in connection with a national road, ***a toll road or an interprovincial bridge***, or the designing, planning or construction of ***a national road, a toll road or such bridge*** or with a view to the declaration of an existing road or tiny route as a national road;

(c) to plan, design or construct ***or maintain*** any national road ***toll road or interprovincial bridge***;

(cA) to provide, establish, erect and maintain facilities on *national roads* ***and toll roads*** for the convenience and safety of road users;"

(b) by the substitution for paragraph (f) of subsection (1) of the following paragraph:

"(f) by itself or in collaboration with or through ***the Council for Scientific and Industrial Research referred to in section 2 of the Scientific Research Council Act, 1988 (Act No. 46 of 1988), or any other*** any person or body, to do research or cause research to be done, or make any other investigation or cause any other investigation to be made,

whether in the Republic or elsewhere, in connection with the design, planning, **or** construction, *or operation* of roads, the materials or plant or other equipment for that purpose, the control of traffic on **public** roads or any other matter which in the opinion of the Board will further the objects of this Act;"

(c) by the substitution for paragraph (m) of subsection (1) of the following paragraph:

"(m) for the purpose of carrying out an agreement between the Government of the Republic and the government of any other country or territory, to exercise or perform, *by the direction of the Minister*, in the Republic or in the country or territory concerned, in connection with roads or an interstate bridge any power, function or duty which the Board is empowered under this Act to exercise or perform in connection with roads (whether national roads or not);"

(d) by the addition to subsection (1) of the following paragraphs:

"(n) to establish and operate an information and management system in respect of national roads;

(o) to control and monitor any work, performed in respect of national roads by any person or authority, which is wholly paid for from the fund;

(p) to collect, or cause to be collected by any person appointed for that purpose, money payable as toll on a toll road;

(q) to provide, establish, maintain and operate toll gates on a toll road;

(r) to authorize, approve or permit the construction or establishment of anything on or over, or below the surface of, a national road, and charge a levy, fee or rent for the use of that national road for purposes relating to such construction or establishment;

(s) to utilize any portion of a national road, not immediately required for traffic purposes, for such purposes as the Board may deem fit;

(t) to perform any function which the Board, in terms of this Act or any other law, is authorized or entitled to perform, including any other function emanating therefrom."

Amendment of section 6 of Act 54 of 1971, as amended by section 3 of Act 79 of 1983 and section 5 of Act 100 of 1992

7. Section 6 of the principal Act is hereby amended-

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

"(1) The Board may in writing delegate any power conferred on, *or any function assigned to*, it by this Act, to any member or officer of the Board.";

(b) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

"(a) The Board may, subject to the provisions of paragraph (b) of this subsection, in writing delegate a power conferred on, *or a function assigned to*, it by **subsection (1) or (3) of this section, or subsection (1)(b), (c), (d), (e), (f) or (l) or subsection (2) of section 5, or section 7(1) or 8** this Act to the **Administrator Premier** of a province to be exercised by the **Administrator Premier** concerned in that province or in respect of a particular national road or other matter in that province.";

(c) by the substitution for paragraphs (d) and (e) of subsection (2) of the following paragraphs, respectively:

"(d) Notwithstanding anything to the contrary in any other law contained, **an Administrator a Premier** may-

(i) enter into such an agreement and comply with its terms and conditions;

(ii) exercise a power *or perform a function* so delegated, and *do or* cause the work connected with it to be done **by officers or employees of the provincial administration in question**.

(e) When a power *or function* conferred on, *or assigned to*, the Board in terms **of the provisions of subsection (1) or (3)** of this section **or section 7(1)** has been delegated to **an Administrator a Premier** under paragraph (a) of this subsection-

(i) a member of the executive **committee of the** council of the province in question and an officer or employee of **the administration of** that province shall, for the purposes of the provision in question, be deemed to be a member of the Board and an officer of the Board, respectively;

(ii) a reference in the provision in question to a power conferred by this Act shall, for the purposes of the exercise of the delegated power by the **Administrator Premier**, be deemed to be a reference to a power so delegated.";

(d) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

"(a) Notwithstanding the provisions of section 16(2) of the South African Roads Board Act, 1988 (Act No. 74 of 1988), or any other law, the Board may have **the construction of roads and toll roads or an investigation, survey, design, planning or other work** any power *or function* which it is in terms of this Act empowered to **do** exercise *or perform* on or in connection with national roads **toll roads** or routes **including the collection of money by way of a toll at a toll gate on a toll road, and the operation of such a toll gate, done** exercised *or performed* by any other person *or authority* on such terms and conditions as may be determined by agreement between the Board and such other person *or authority*."; and

(e) by the addition to subsection (3) of the following paragraph:

"(c) *The Board may, whether upon application by a province or local authority or not, in exercising its powers and performing its functions in terms of paragraph (a) of this subsection, give preference to a province or local authority to perform the work in terms*

of that paragraph: Provided that the province or local authority is competent to exercise or perform that power or function to the Board's satisfaction, and a suitable agreement has been concluded."

Amendment of section 7 of Act 54 of 1971, as amended by section 57 of Act 63 of 1975 and section 13 of Act 100 of 1992

8. Section 7 of the principal Act is hereby amended-

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

"(1) A member or officer of the Board, or any person authorized thereto in writing by the Board, may, subject to the provisions of subsections (2) , **(3)** and (4), enter upon any land with the necessary workmen, animals, vehicles, machines, instruments, tools or materials to carry out on, below the surface of, or in connection with, that land or other land any investigation, Survey, observation or other act necessary for or connected with the exercise or performance of a power, function or duty conferred on or entrusted to the Board in terms of this Act."; and

(b) by the deletion of subsection (3).

Amendment of section 8 of Act 54 of 1971, as substituted by section 88 of Act 63 of 1975 and amended by section 3 of Act 66 of 1980 and section 6 of Act 100 of 1992

9. Section 8 of the principal Act is hereby amended-

(a) by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively:

"(a) expropriate land for a *national* road or for works or purposes in connection with a *national* road, including any access road, the acquisition, mining or treatment of gravel, stone, sand, clay, water or any other material or substance. the accommodation of road building staff and the storage or maintenance of vehicles, machines, equipment, tools, stores or material:

(b) take gravel, stone, sand, clay, water or any other material or substance on or in land for the construction of a road or for works or *for* purposes referred to in paragraph (a);"; and

(b) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

"(d) if any land is or will be divided by a road *referred to in paragraph (a)* in such a manner that in the opinion of the Board, that land or any part of it is or will be useless to its owner, expropriate that land or the part of it in question."

Amendment of section 9 of Act 54 of 1971, as repealed by section 89 of Act 63 of 1975 and inserted by section 4 of Act 79 of 1983 and. amended by section 7 of Act 100 of 1992 and section 1 of Act 27 of 1994

10. Section 9 of the principal Act is hereby amended-

(a) by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively:

"(a) subject to subsection (3), declare a national road or any portion thereof, including any bridge or tunnel on a national road, as a toll road, *for the purposes of this Act*, and amend or withdraw any such declaration;

(b) in respect of the driving of any vehicle on a toll road, levy a toll the amount of which has been determined and made known in terms of subsection (4) and which shall be payable at a toll gate by the person so driving the vehicle, *or at any other place subject to such conditions as the Board may determine*;"

(b) by the deletion of paragraph (c) of subsection

(c) by the deletion of paragraph (a) of subsection (3);

(d) by the substitution for subsection (4A) of the following subsection:

"(4A) *Notwithstanding anything to the contrary in this Act contained—*

(a) the Board may under the conditions and for the period it deems fit, with the approval of the Minister, and in terms of an agreement authorise any person to plan, design, construct and operate a national road or any portion thereof which has, in terms of this section, been declared to be a toll road, or any portion of a toll road so declared;

(b) the person referred to in paragraph (a) shall, subject to the provisions of paragraph (c), be entitled to levy toll, and collect moneys payable as toll on such toll road, or portion thereof, for his or her own account during the said period, and may for that purpose erect a toll gate or toll gates and facilities in connection therewith on the toll road, or portion of the toll road; and

(c) the person referred to in paragraph (a) shall only be entitled to levy toll in accordance with an agreement with the Board and provided that the amount of such toll has been approved by the Minister."; and

(e) by the substitution for paragraph (a) of subsection (5) of the following paragraph:

"(a) Any person who refuses or fails to pay the amount of toll at a toll gate, *or at any other place contemplated in paragraph (b) of subsection (1)*, for which he is liable in terms of this section, shall be guilty of an offence. "

Amendment of section 15 of Act 54 of 1971, as amended by sections 9 and 13 of Act 100 of 1992

11. Section 15 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The provisions of subsection (1) shall not apply to any person who, after the date on which a road or route is under section 4(1)(a) declared to be a national road, on land

forming part of the national road or building restriction area in question, continues a business or undertaking which was carried on on the land in question immediately before the date ***and, if a proclamation under section 4(1)(b) was then applicable in respect of that land, also immediately before the date on which such proclamation was published in the Gazette*** unless such person has by notice in writing been directed by the Board to discontinue the business or undertaking before a date stated in the notice, and that date has arrived: ***Provided that, in the case of a business or undertaking on land in a territory or area referred to in section 4(2), such a notice may only be issued after consultation with the Director-General: Regional and Land Affairs.***".

Insertion of section 15A in Act 54 of 1971

12. The following section is hereby inserted after section 15 of the principal Act:

"Compensation

15A. (1) If the Board in terms of the provisions of sections 10, 13 or 15 grants to any person an authorization, approval or permission to provide, construct, erect, establish, carry on or operate on, over or under a national road, anything in terms of those sections, the Board may in respect of that authorization, approval or permission charge a levy, fee or rent as determined by the Board from that person.

(2) The levy, fee or rent contemplated in subsection (1) may differ in the case of every authorization, approval or permission."

Repeal of section 19 of Act 54 of 1971

13. Section 19 of the principal Act is hereby repealed.

Amendment of section 20 of Act 54 of 1971

14. Section 20 of the principal Act is hereby amended by the insertion after paragraph (b) of subsection (1) of the following paragraph:

"(A) which is not inconsistent with the provisions of a road traffic law, in respect of traffic on a national road or the use or protection of a national road or the use or presence of vehicles or animals or any other thing on a national road."

Amendment of section 25 of Act 54 of 1971

15. Section 25 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

"Notwithstanding anything to the contrary in any other law contained but subject to the provisions of section 9 or that section as applied by any other provision of this Act, no action shall lie against the Board in respect of damage due to any act or omission of the Board in connection with any matter relating to the condition of a national road, or in respect of any act performed by an officer of the Board or other authorized person in the execution of his duty in connection with such road, unless-".

Amendment of section 28 of Act 54 of 1971

16. Section 28 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

(3) Nothing in this Act shall have the effect of interfering with or diminishing the powers conferred on, or a right or permission granted by, ***the State President, the Minister of Mines, a mining commissioner, Government Mining Engineer or an inspector of mines*** *the President, the Minister of Mineral and Energy Affairs and the Director-General of Mineral and Energy Affairs* in terms of any law relating to mining or prospecting, or a regulation made under such law.

Amendment of Act 54 of 1971

17. The principal Act is hereby amended-

(a) by the substitution for the words "the Administrator" and "an Administrator", wherever they occur, of the words "the Premier" and "a Premier", respectively;

(b) by the substitution for the words "State President", wherever they occur, of the word "President"; and

(c) by the substitution for the expression "Minister of State Expenditure", wherever it occurs, of the expression "Minister of Finance".

Commencement of Act 100 of 1992

18. The National Roads Amendment Act, 1992 (Act No. 100 of 1992), excluding sections 7(d), 9(a) and 10, shall be deemed to have come into operation on 1 July 1992.

Amendment of section 16 of Act 74 of 1988

19. Section 16 of the South African Roads Board Act, 1988, is hereby amended by the addition of the following subsection:

"(3) Notwithstanding the provisions of subsection (2), the Board may have any executive or administrative work done by any other person, on such terms and conditions as may be determined by agreement between the Board and such other person, if-

(a) the Director-General does not have officials available in the Department with the necessary expertise to perform such work efficiently; or

(b) the Director-General does not have sufficient personnel available in the Department to perform such work."

Repeal of laws, and saving

20. (1) The National Roads Act, 1971 (Act No. 54 of 1971), which continued in force in terms of section 2 of the Status of the Transkei Act, 1976 (Act No. 100 of 1976), section

2 of the Status of Bophuthatswana Act, 1977 (Act No. 89 of 1977), section 2 of the Status of Venda Act, 1979 (Act No. 107 of 1979), and section 2 of the Status of Ciskei Act, 1981 (Act No. 110 of 1981), in the relevant territories and which is still in force in those territories are hereby repealed.

(2) If the Board has in terms of a provision of the National Roads Act, 1971, which has been amended or deleted by this Act, agreed or undertaken, or incurred any obligation, to perform any work, such agreement, undertaking or obligation shall be executed as if that provision of the Act concerned has not been so amended or repealed.

Short title and commencement

21. (1) This Act shall be called the National Roads Amendment Act, 1996.

(2) Section 5(1)(r) of the principal Act, as inserted by section 6 of this Act, and section 12 of this Act shall be deemed to have come into operation on 1 August 1993.