

REPUBLIC OF SOUTH AFRICA

**SOUTH AFRICAN RAIL
COMMUTER CORPORATION
LIMITED FINANCIAL
ARRANGEMENTS BILL**

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No 21547 of 8 September 2000) (The English text is the official text of the Bill)

(MINISTER OF TRANSPORT)

[B 64—2000]

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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 Legal Succession to the South African Transport Services Act, 1989, so as to remove the power of the South African Rail Commuter Corporation Limited to borrow money, except for purposes of bridging finance in limited circumstances; to remove the power of the Corporation to guarantee or secure the debts or obligations of persons who are not wholly-owned subsidiaries of the Corporation; to subject the power of the Corporation to guarantee or secure the debts or obligations of wholly-owned subsidiaries of the Corporation, to the conditions and limitations imposed by the Minister of Transport; to provide for the State to take over, in a specified amount, all loan obligations and net liabilities of the Corporation; and to provide for matters connected therewith.

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

Amendment of section 23 of Act 9 of 1989, as amended by section 16 of Act 52 of 1991 and section 3 of Act 47 of 1992

1. Section 23 of the Legal Succession to the South African Transport Services Act, 1989 (hereinafter referred to as the principal Act), is amended by the substitution— 5

(a) for subsection (4) of the following subsection:

“(4) The Corporation shall have the capacity and powers of a natural person of full capacity in so far as a juristic person is capable of having such capacity or of exercising such powers, except the power to issue guarantees, indemnities or securities to secure or indemnify the obligations of persons that are not wholly-owned subsidiaries of the Corporation.” 10

(b) in subsection (5) for the words preceding paragraph (a) of the following words:

“(5) **[Without derogating from the generality of]** Subject to the provisions of subsections (1), (2) and (4), the Corporation shall have power—” 15

(c) in subsection (5) for paragraph (d) of the following paragraph:

“(d) to **[borrow,]** lend or invest money, and to borrow money only for purposes of bridging finance in the manner and subject to the maximum amounts determined, from time to time, by the Minister of Finance;” 20

(d) in subsection (5) for paragraph (e) of the following paragraph:

“(e) to open an account or accounts in the name of the Corporation with one or more banks registered under section 17 of the Banks Act, 1990 (Act No. 94 of 1990), in which all moneys received by the Corporation are to be deposited and from which its expenses are to be paid, and to do everything necessary to operate such accounts, and also to draw, accept, endorse or discount cheques, promissory notes and bills of exchange;”;

(e) in subsection (5) for paragraph (f) of the following paragraph:

“(f) to enter into indemnities, guarantees and suretyships and to secure payment in terms thereof in any manner, only in so far as such indemnities, guarantees and suretyships relate to the liabilities or obligations of any wholly-owned subsidiary of the Corporation and subject to the conditions and limitations imposed by the Minister;”.

Amendment of section 31 of Act 9 of 1989, as amended by section 22 of Act 52 of 1991, section 7 of Act 47 of 1992 and section 2 of Act 43 of 1995

2. Section 31 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) The provisions of sections 13 and 18 **[and 19]** of this Act shall apply *mutatis mutandis* to the Corporation, provided that [—

(a)] the reference in sections 13(7) and 18(1) **[and 19(1)]** to the Minister shall be interpreted as a reference to the Minister of Transport.

[(b) the reference in section 19(1) to the memorandum of association and the provisions of the Companies Act, 1973, shall be interpreted as a reference to the capacity and powers of the Corporation in terms of section 23.]”.

Taking over by State of loan obligations of Corporation

3. The State shall take over the total loan obligations of the South African Rail Commuter Corporation Limited, established in terms of section 22 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), as they existed at 30 April 2000, in a total amount of R2 281 000 000 (two billion two hundred and eighty-one million rand) plus interest payable by the Corporation on the various loans making up the said amount, from 1 May 2000 to the date of payment.

Short title and commencement

4. (1) This Act is called the South African Rail Commuter Corporation Limited Financial Arrangements Act, 2000.

(2) Sections 1 and 2 of this Act shall come into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN RAIL COMMUTER CORPORATION LIMITED FINANCIAL ARRANGEMENTS BILL

Background

The Bill is designed to give effect to an earlier Cabinet decision to take over the loan debt of the South African Rail Commuter Corporation Limited (the Corporation), withdraw its borrowing powers, except for bridging finance, and put its annual capital needs on the budget of the national Department of Transport.

Since its establishment in 1990, the Corporation has been obliged to fund its capital needs, and, before 1993, also part of its operational needs, by borrowing money. The Corporation provides socio-economic services on a subsidised basis. This means that its fare revenue is not sufficient to cover its operational and capital costs, and therefore that if the full shortfall is not forthcoming from government, it has to make up the difference by borrowing.

The amount of the debt and the net liabilities which are to be taken over will amount to approximately R2 500 million.

The National Department of Transport and the Corporation are involved in a number of initiatives to increase efficiency, rationalise services and reduce dependency on outside funds. These include concessioning of certain services, and a rationalisation of all public transport services in terms of the national Land Transport Transition Act, 2000 (Act No. 22 of 2000).

Objects of Bill

Section 213(2) of the Constitution provides that money may be withdrawn from the National Revenue Fund only by an Act of Parliament. Legislation to allow the government to borrow money to cover the Corporation's debt and approve payment and transfer of this money to the Corporation to off-set the debt, must therefore be tabled. Accordingly the Bill provides that the State will take over the total loan obligations as they existed on 30 April 2000 amounting to R2 281 million plus interest thereon to the date of payment. The remainder of R219 million representing non-interest bearing debt such as creditors will be appropriated through the normal budget process. The Minister of Finance is empowered by the Public Finance Management Act, 1999 (Act No. 1 of 1999), to borrow the amount necessary to cover the costs of taking over such loan obligations and net liabilities (see section 66(2)(a), read with section 71(f), of that Act).

The Bill also amends the Legal Succession to the South African Transport Services Act, 1989, by removing the borrowing powers of the Corporation except for purposes of bridging finance in the manner and subject to the maximum amounts approved from time to time by the Minister of Finance. This also involves removing the powers of the Corporation to borrow money by means of financial instruments. Its powers to guarantee the obligations of other persons or entities are also limited to normal day-to-day credit facilities related to normal business operations of the Corporation's wholly-owned subsidiaries, subject to the conditions and limitations, if any, imposed by the Minister of Transport. As a result, Chapter 5 of the Legal Succession to the South African Transport Services Act, 1989, is also being amended to bring it into line with the Bill.

Financial implications for the State

The debt and net liabilities amount to approximately R2 500 million. On approval of the Bill by Parliament, an amount of R2 281 million plus interest will be consolidated into national government debt. The remaining R219 million will be appropriated through the budget process as part of the budget of the national Department of Transport.

Consultation

Although the Bill is being introduced by the Minister of Transport, it was developed jointly with the Minister of Finance and the Corporation. The Department of Public Enterprises has also been consulted.

Parliamentary procedure

The Department of Transport and the State Law Advisers are of the opinion that the Bill should be dealt with in terms of section 75 of the Constitution since it contains no provision to which section 74 or 76 of the Constitution applies.