

REPUBLIC OF SOUTH AFRICA

NATIONAL LAND TRANSPORT TRANSITION AMENDMENT BILL

*(As amended by the Select Committee on Public Services (National Council of Provinces))
(The English text is the official text of the Bill)*

(SELECT COMMITTEE ON PUBLIC SERVICES ON REQUEST OF THE MINISTER OF TRANSPORT)

[B 39B—2001]

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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 National Land Transport Transition Act, 2000, so as to substitute certain definitions; to make certain textual alterations; to make provision for vehicles imported or built by registered importers or builders to be used in terms of the Act; to make provision for subsidised service contracts to be concluded despite the absence of transport plans; to allow extensions of contracts to be concluded while preparations are being made for the tender process with a view to a subsidised service contract; to enable municipal and parastatal operators to use money made available under the Act for interim contracts, current tendered contracts and extensions of contracts; to allow the board to exercise certain powers under the Road Transportation Act, 1977, subject to replacing provincial laws; to provide for remuneration of members of public transport licencing boards and quorums for meetings thereof unless provincial legislation prescribes otherwise; to further regulate the registration of members of minibus taxi associations; to repeal two provisions relating to certain definitions in road traffic legislation; to validate certain subsidised service contracts and actions; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 22 of 2000

1. Section 1 of the National Land Transport Transition Act, 2000 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of “contracting authority” of the following definition:

“ ‘contracting authority’ means the Department, any provincial department, transport authority, **[designated]** municipality **[and]** or any core city, bound to a contract or concession agreement concluded with a public transport operator;”;

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- (b) by the substitution in the definition of “current tendered contract” for paragraph (b) of the following paragraph:
 “(b) public transport operator and a transport authority or a **[designated]** municipality or a core city to which the province, after the date of commencement of this Act— 5
- (i) may have assigned its rights and obligations; or
- (ii) as the case may be, may have further assigned the rights and obligations assigned to it by the Department in terms of paragraph (a);”;
- (c) by the substitution for the definition of “long-distance service” of the following definition: 10
 “ ‘long-distance service’ means a scheduled or unscheduled public transport service **[operated by road]**, other than a service for commuting, that is provided beyond the boundary of the area covered by a transport plan, where passengers are charged fares individually;”;
- (d) by the substitution for the definition of “planning authority” of the following definition: 15
 “ ‘planning authority’ means **[any body which, in terms of section 20, has to prepare transport plans for its area]** a transport authority, a core city or any municipality whose jurisdictional area has not been included wholly or partly in a transport area or a MTA in respect of its jurisdictional area or the parts thereof that have not been so included, as the case may be;”;
- (e) by the substitution for the definition of “registered manufacturer” of the following definition: 20
 “ ‘registered manufacturer’ means a manufacturer, importer or builder of motor vehicles registered under section 5 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);”. 25

Amendment of section 30 of Act 22 of 2000

2. Section 30 of the principal Act is hereby amended—
- (a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 30
 “(3) The functions of a board are to receive, consider and decide on or otherwise dispose of, in accordance with this Act and relevant provincial laws, subject to sections 90 and 94—”; and
- (b) by the substitution in subsection (3) for paragraph (d) of the following paragraph: 35
 “(d) applications for the renewal, amendment or transfer of operating licences that had been so granted by it for interprovincial transport, subject to the approval of the relevant board of the other province, or of every other province, in which passengers are picked up or set down, as the case may be, but subject to subsection **[(3)] (5)**.”. 40

Amendment of section 47 of Act 22 of 2000

3. Section 47 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 45
 “(1) After the expiry of any interim contract or current tendered contract or any extension thereof, whether provided for in such contract or negotiated, if the public transport service that had been operated in terms thereof will continue to be subsidised, that service must be operated in terms of a subsidised service contract.”;
- (b) by the substitution in subsection (3) for paragraph (f) of the following paragraph: 50
 “(f) the public transport operator concerned may not for a period of such negotiated contract calculated as 80 per cent of that period, beginning on the date of commencement thereof, be party to any **[other current tendered contract or]** subsidised service contract, **[or another contract negotiated under this subsection]**; and”. 55

Amendment of section 49 of Act 22 of 2000

4. Section 49 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Subject to section 47(3), no moneys made available for the purposes of this Act may be used in connection with the operation of a public transport service by a municipal transport operator or parastatal transport operator otherwise than in accordance with a commercial service contract, **[or]** a subsidised service contract, an interim contract or a current tendered contract, or a negotiated contract contemplated in section 47(3).”.

Amendment of section 77 of Act 22 of 2000

5. Section 77 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsections:

“(1A) The MEC must appoint such members and determine their conditions of service.

(1B) Such members receive the remuneration determined by the MEC with the agreement of the member of the executive council responsible for finance in the province.

(1C) The MEC must appoint a chairperson for the board.

(1D) The MEC must, before appointing any member to the board, publish a notice of intention to do so, and invite applications for membership in at least one newspaper circulating in the province.”.

Amendment of section 78 of Act 22 of 2000

6. Section 78 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“**Powers and duties of board**”;

(b) by the addition of the following subsections:

“(5) Subject to any replacing provincial laws—

(a) for the purpose of dealing with a matter before it in terms of this Act, the board may exercise the powers contemplated in section 9 of the Road Transportation Act, 1977 (Act No. 74 of 1977), with the changes required by the context;

(b) the board or an official contemplated in section 20(5) of the Road Transportation Act, 1977, may consider and grant or refuse applications for temporary permits contemplated in section 20 of that Act, or operating licences or other authorisations for special events in terms of replacing provincial laws if, in the case of such an official, that official places a record of actions taken by him or her in terms of this paragraph before the board at its next meeting for the board’s ratification;

(c) the board may withdraw, suspend or vary a permit or operating licence in the circumstances contemplated in section 25(1)(a) of the Road Transportation Act, 1977, which applies with the changes required by the context.

(6) (a) A decision of a majority of members of the board present at a meeting constitutes the decision of the board.

(b) In the event of an equality of votes on any matter, the person presiding at the meeting has a casting vote in addition to his or her deliberative ordinary vote, unless the MEC prescribes alternative arrangements.”.

Amendment of section 112 of Act 22 of 2000

7. Section 112 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (b)(i) of the following subparagraph:

“(i) the new member—

(aa) holds an appropriate operating licence or permit for each vehicle by means of which the member operates a public transport service or has applied for such an operating licence; and

(bb) operates the public transport service to which such an operating licence or permit relates, in compliance with the terms of, and conditions

attached to, **[the]** every operating licence or permit which such member holds;”.

Amendment of section 113 of Act 22 of 2000

8. Section 113 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (d)(ii) of the following subparagraph: 5
- “(ii) operates the public transport service to which such an operating licence or permit relates, in compliance with the terms of, and conditions attached to, the operating licence or permit;”.

Amendment of section 130 of Act 22 of 2000

9. Section 130 of the principal Act is hereby amended by the substitution for the words preceding paragraph (g) of the following words: 10
- “Section **[104]** 10A of the Urban Transport Act, 1977, is hereby amended by the addition after paragraph (f) of the following paragraph:”.

Repeal of sections 131 and 132 of Act 22 of 2000

10. Sections 131 and 132 of the principal Act are hereby repealed. 15

Amendment of section 134 of Act 22 of 2000

11. Section 134 of the principal Act is hereby amended by the addition of the following subsections, the existing section becoming subsection (1):
- “(2) (a) Wherever this Act requires regard to be had to any transport plan, a board, contracting authority, transport authority, core city or municipality may proceed with the relevant matter, with the approval of the relevant MEC in consultation with the Minister, despite the fact that the relevant transport plan has not been prepared or has not been submitted for required approvals, or has not been published under section 29(1). 20
- (b) The MEC may grant such approval either in general or in specific terms. 25
- (c) The board, contracting authority, transport authority, core city or municipality must, however, have regard to any available transport planning or other matter which is relevant.
- (3) A current public transport record prepared in terms of section 3 of the National Land Transport Interim Arrangements Act, 1998 (Act No. 45 of 1998), is deemed to be a current public transport record contemplated in section 23 of this Act until the latter has been prepared. 30
- (4) Where this Act empowers the Minister or MEC to determine a date by which transport plans must be prepared, different dates may be so determined for different planning authorities, or different areas, and such dates may be extended. 35
- (5) Until a board has been established for a province in terms of section 30(1)—
- (a) a local road transportation board established in terms of section 4 of the Road Transportation Act, 1977 (Act No. 74 of 1977), or a similar body established in terms of a replacing provincial law (in this section referred to as a “previous board”) may exercise the powers and perform the duties of a board under this Act in the province concerned, but only until a date to be determined by the Minister, after consultation with the relevant MEC, by notice in the *Gazette*; 40
- (b) any power exercised or duty or function validly performed by a previous board in terms of the Road Transportation Act, 1977 (Act No. 74 of 1977), or a replacing provincial law after the commencement of this Act is deemed to have been validly exercised or performed; and 45
- (c) any application to a previous board relating to the granting, amendment, renewal or transfer of a permit which has not been disposed of, is deemed to be an application under this Act or a replacing provincial law relating to the appropriate operating licence.” 50

Validation of certain subsidised service contracts

12. Any subsidised service contract concluded before the commencement of the principal Act and any preparations made or steps taken with a view to the conclusion of such a contract are hereby validated, despite the fact that—

- (a) relevant public transport plans have not or had not been prepared, submitted for required approvals, or published under section 29(1) of the principal Act; 5
- or
- (b) there has not or had not been compliance with section 47(4) of the principal Act.

Short title

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13. This Act is called the National Land Transport Transition Amendment Act, 2001.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL LAND TRANSPORT TRANSITION AMENDMENT BILL, 2001

OBJECTS OF BILL

1. The Bill seeks to amend various sections of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000) ("the Act"), by—

- (a) deleting the expression "designated" in the definitions of "contracting authority" and "current tendered contract" in order to bring these definitions into line with the definition of planning authority, which provides that all municipalities will be planning authorities;
- (b) removing reference to public transport service "by road" in the definition of "long-distance service" and thereby including rail service;
- (c) expanding the definition of "registered manufacturer" to include minibuses and midibuses imported and built by registered importers or builders to be used under operating licences pending the exercise of the powers of the Minister under section 31 of the Act so as to bring the Act into line with section 5 of the National Road Traffic Act, 1996, (Act No. 93 of 1996);
- (d) providing that—
 - (i) contracting authorities may extend current tendered contracts and interim contracts on expiry despite the fact that public transport plans have not yet been finalised or published, so as to allow continuation of bus tender contracts despite the fact that Part 7 of the Act is not yet in operation; and
 - (ii) operators who have concluded a negotiated contract may not be party to any subsidised service contract;
- (e) making provision for moneys made available for purposes of the Act to be used also by municipal and parastatal transport operators in accordance with an interim contract or a current tendered contract;
- (f) allowing the MEC to determine remuneration of board members;
- (g) making it clear that newly constituted operating licensing boards will be able to issue temporary permits contemplated in section 20 of the Road Transportation Act, 1977 (Act No. 74 of 1977);
- (h) providing for registration of new members of taxi associations who have applied for operating licences;
- (i) providing for non-members holding permits to be registered while the permits have not yet been converted to operating licences;
- (j) providing for—
 - (i) authorities to continue with their activities despite the fact that the relevant transport plans have not yet been finalised or published;
 - (ii) current public transport records (CPTRs) prepared under the National Land Transport Interim Arrangement Act, 1998 (Act No. 45 of 1998), to be deemed to be CPTRs required by the Act until the latter have been prepared;
 - (iii) the Minister and MECs to determine different dates for different areas in respect of which transport plans must be prepared; and
 - (iv) transitional arrangements where provinces have not yet established operating licensing boards.

2. The Bill also seeks to validate certain subsidised service contracts and actions taken with a view thereto before the commencement of the Act.

DEPARTMENTS/BODIES/PERSONS CONSULTED

3. The following were consulted:
Provincial MECs for Transport and Provincial Departments of Transport.

FINANCIAL IMPLICATIONS FOR STATE

4. None.

PARLIAMENTARY PROCEDURE

5. The State Law Advisers and the Department of Transport are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it falls within a functional area listed in Schedule 4 to the Constitution, namely “Public transport”.