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GENERAL NOTICE

DEPARTMENT OF TRANSPORT

NOTICE 906 OF 1998

**PUBLICATION FOR PUBLIC COMMENT: NATIONAL LAND TRANSPORT
INTERIM ARRANGEMENTS BILL, 1998**

The draft legislation set out in the Schedule hereto, which the Minister of Transport proposes to introduce in Parliament, is hereby published for public comment in compliance with section 154(2) of the Constitution of the Republic of South Africa, 1996, (Act No. 108 of 1996).

K GORDHAN
Director General

B I L L

To make arrangements relating or relevant to transport planning and public road transport services within metropolitan transport areas declared under the Urban Transport Act, 1977, and to the designation of core cities under that Act. For those purposes to allow also a municipality falling within a metropolitan transport area situated wholly within the region of a regional services council, to be the core city of the metropolitan transport area concerned in certain circumstances; to require the core city to prepare a current public transport record in respect of its metropolitan transport area for submission to the relevant MEC not later than 31 December 1998; to require the core city to perform its transport planning for that area with due regard to that record and as an integral part of the land development process; to prescribe additional requirements relevant to disposing of applications concerning road carrier permits for the regular conveyance of persons within a metropolitan transport area for reward; to limit the circumstances in which a permit authority under the Road Transportation Act, 1977 (or, where applicable, any provincial law by which that Act is superseded), may refuse a road carrier permit to an applicant to whom a contract for the provision of a public transport service has been awarded by a provincial tender board after a public tendering process; to provide for legal succession to the South African Roads Board as far as its powers, functions and duties under the Urban Transport Act, 1977, are concerned; and to provide for incidental matters.

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

Definitions

1. In this Act, if not inconsistent with the context—

- i. "core city" means a municipality designated under section 4 of the Urban Transport Act as the core city of a metropolitan transport area, and includes any municipality which, after the commencement of this Act, is so designated under that section read with section 2 of this Act;
- (iii)

- ii. "Department" means the Department of Transport in the national sphere of government; (i)
- iii. "Director General" means the Director General of the Department, and includes any employee of the Department acting on the authority of the Director General; (ii)
- iv. "MEC" means the member of the Executive Council of a province entrusted with public transport affairs; (iv)
- v. "metropolitan transport area" means any area declared a metropolitan transport area under section 3 of the Urban Transport Act; (v)
- vi. "Minister" means the Minister of Transport in the national sphere of government: (vi)
- vii. "permit authority"—
 - a. except in the circumstances mentioned in paragraph (b) of this definition, means a local road transportation board established under section 4 of the Road Transportation Act for an area declared a road transportation area under section 2(a) of that Act;
 - b. where that Act has been superseded in any province by a law of the province, means any board, authority or other body which in terms of such a law performs in that province or any part thereof functions which are substantially the same as those that such a local road transportation board performs in relation to its own area of jurisdiction: (viii)
- viii. "replacing provincial law" means a provincial law of the nature mentioned in paragraph (b) of the definition of "permit authority" in this section; (ix) "Roads Board" means the South African Roads Board established by section 2 of the South African Roads Board Act, 1988 (Act No. 74 of 1988); (vii)
- ix. "Road Transportation Act" means the Road Transportation Act, 1977 (Act No. 74 of 1977), as applicable and in force in each of the provinces of the Republic; and (x)
- x. "Urban Transport Act" means the Urban Transport Act, 1977 (Act No.78 of 1977). as applicable and in force in each of the provinces of the Republic. (xi)

Regional services council need not be core city of metropolitan transport area situated wholly within its region

2.

1. Where an area that is declared a metropolitan transport area after the commencement of this Act, is situated wholly within the region of a regional services council that is wholly or partly charged with functions regarding the land use and transport planning in its region in terms of section 3(1)(b) of the Regional Services Councils Act, 1985 (Act No.109 of 1985). and is also not situated wholly within the area of jurisdiction of a transitional metropolitan council falling within that region. any other municipality whose area of jurisdiction falls wholly within that metropolitan transport area may. despite subsection (3)(a) of section 4 of the Urban Transport Act, be designated the core city of that metropolitan transport area—
 - a. if there are good and practical reasons for doing so:
 - b. with the agreement of the regional services council concerned and that other municipality: and
 - c. subject to subsection (2) of this section.
2. In performing its core city functions in terms of the Urban Transport Act. a municipality so designated must liaise and at all times co-ordinate its activities with those of that regional services council so as to ensure that the land use and transport planning in the region is developed in a duly co-ordinated and integrated fashion.

Core cities to submit current public transport records to MEC in respect of their metropolitan transport areas

3.

1. After the commencement of this Act, the core city of each metropolitan transport area must prepare a record in accordance with the document titled "Requirements and Format for Preparation of Current Public Transport Records by Core Cities", as published in the Gazette on 22 May 1998 under General Notice No. 847 of 1998, to be known as a current public transport record, reflecting—
 - a. all the public transport services being provided and operated within its metropolitan transport area under the authority of road carrier permits issued under the Road Transportation Act or a replacing provincial law; and
 - b. all the facilities and infrastructure in place and utilised in that metropolitan transport area for the purpose of or in connection with those public transport services, as well as the facilities and infrastructure being developed within that metropolitan transport area for that purpose or in that connection.
2. Every core city must submit its current public transport record to the MEC not later than 31 December 1998. However, the MEC, with the agreement of the Minister, by notice in the provincial gazette may extend the period for the submission of current public transport records for metropolitan transport areas under the jurisdiction of the province concerned, to a later date specified in the notice.
3. The core city must ensure that the current public transport record is updated on a continuous basis and consolidated regularly.

Transport planning for metropolitan transport areas must be integrated with land development process

4. After the commencement of this Act, each core city, when preparing, revising or updating any transport plan for its metropolitan transport area in terms of section 17 of the Urban Transport Act, must do so with due regard to the current public transport record prepared by it for that metropolitan transport area in terms of section 3 of this Act and must ensure that the transport plan is duly integrated with the land development process in the context of integrated development planning in terms of the Local Government Transition Act, 1993 (Act No. 209 of 1993), and the Development Facilitation Act, 1995 (Act No. 67 of 1995), or, where appropriate, any similar or corresponding law in force in the province concerned.

Permit authority must consider core city's recommendations in disposing of application for permit authorising transport in metropolitan transport area

5. (1)

- a. After the commencement of this Act, a permit authority, before considering any application for the grant, renewal, amendment or transfer of a road carrier permit in terms of the Road Transportation Act, or a replacing provincial law, authorising the regular conveyance of persons for reward within a metropolitan transport area, must inform the core city of that metropolitan transport area by notice in writing of the application concerned, with the request to make recommendations with regard to the application, together with any representations, to

that permit authority within the period stated in the notice (which may not be shorter than 21 days reckoned from the date of the notice).

2. The core city must make its recommendations, and any representations it considers fit, having regard to the current public transport record prepared by it for that metropolitan transport area in compliance with section 3 of this Act, and submit them to the permit authority within the period allowed therefor by the notice issued in terms of paragraph (a).

(2) In disposing of such an application, the permit authority must duly take into account the recommendations and any representations made by the core city concerned.

(3) The provisions of this section are additional to and not in substitution of the relevant provisions of the Road Transportation Act or any replacing provincial law that relates to the disposal of applications in connection with road carrier permits.

Disposal of applications for public road carrier permits made by successful tenderers for contracts to provide public road transport services

6. Where any contract for the provision of a public road transport service within a metropolitan transport area has been awarded by a provincial tender board after completion of a process of public tendering in terms of any law, a permit authority, despite any contrary provisions of the Road Transportation Act or a replacing provincial law, may not refuse the successful tenderer's application for the grant or renewal of a public road carrier permit required for the purposes of that service except on any of the following grounds:

- a. Any previous conviction of the applicant for an offence in terms of the Road Transportation act or any replacing provincial law, and any other failure by the applicant as an operator of public transport.
- b. The existence of any prohibition, limitation or restriction imposed by law on the use of motor vehicles in any area or on any street or road on the route or in the area where the applicant proposes to operate the transport service.

Director General of Transport to succeed South African Roads Board with regard to its functions under Urban Transport Act

7. From the date of commencement of this Act, unless clearly inappropriate

(a) all the powers, functions and duties conferred or imposed on the Roads Board by or in terms of the Urban Transport Act, will pass to the Director General who, as from that date, may exercise any such power and, in the circumstances contemplated in that Act, must perform any such function or duty;

(b) any power, function or duty exercised or performed by the Roads Board under the Urban Transport Act, and any other act performed by it in connection therewith, before the commencement of this Act, will be regarded and treated as if it had been exercised or performed by the Director-general under paragraph (a) of this subsection; and

(c) any reference in the Urban Transport Act to the Roads Board, however expressed, will be regarded and treated, for all purposes, as if it were a reference to the Director General, subject to subsection (2).

After the commencement of this Act, any reference in the Urban Transport Act to an officer of the Roads Board, however expressed, must be regarded and treated for all purposes as a reference to an employee of the Department acting on the authority of the Director General in connection with any matter relating to a power, function or duty of the Director General in terms of subsection (l)(a).

Short title and commencement

8. This Act is called the National Land Transport Interim Arrangements Act, 1998, and comes into operation on a date that will be determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL LAND TRANSPORT INTERIM ARRANGEMENTS BILL, 1998

BACKGROUND

1.1 The Government's policy regarding land transport is as set out in the White Paper on National Transport Policy that was approved by the Cabinet in September 1996 and accepted by the provinces through the MINCOM structure. Shortly thereafter, with a view to giving effect to that policy, the Department of Transport in the national sphere of government started developing draft national land transport legislation in consultation with the provincial and municipal spheres of government, culminating in a working document which was published for comment in December 1996.

1.2 The draft national land transport legislation being developed, depends greatly on the division of the whole Republic into transport areas declared according to municipal boundaries, to be governed by transport authorities on which the municipalities included in the transport area are represented. Given this role of municipalities in the proposed land transport legislation, it is vital to ensure that the provisions of that draft legislation are in harmony with local government legislation, especially as regards the classification, functions and competencies of municipalities, the demarcation of their areas and the relationships between the various categories of municipalities as contemplated in section 155(1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996 - "the Constitution").

1.3 However, the existing local government legislation, notably the Local Government Transition Act, 1993 (Act No. 209 of 1993), is in the process of being superseded by new legislation being prepared by the Department of Constitutional Development and Provincial Affairs, so as to give effect to the Government's policy on local government as contained in the White Paper published in April 1998. Since the principles of the new local government legislation are still being developed and are not yet complete, it will be premature to introduce the proposed draft national land transport legislation at this stage. Accordingly that legislation is kept in abeyance pending finalisation of the new municipal dispensation.

1.4 However, to bridge the gap between the status quo and the proposed new national land transport legislation to some extent, it was deemed prudent to make certain interim arrangements, amongst others, so as to start the process of integrating transport planning with development planning. These interim arrangements are contained in the National Land Transport Interim Arrangements Bill, 1998.

THE BILL

2.1 At present, the responsibilities of the core cities designated for metropolitan transport areas under

the Urban Transport Act, 1977 (Act No. 78 of 1977), relate mainly to transport planning for their respective metropolitan transport areas. The proposed National Land Transport Interim Arrangements Bill, 1998 ("the Bill"), proposes to widen their functions in the interim inasmuch as provision is made for the following:

(1) In terms of clause 3 of the Bill, a core city has to prepare a current public transport record, being a descriptive record of the public transport services, facilities and infrastructure in its metropolitan transport area, in accordance with requirements contained in a certain document published in the Government Gazette. Core cities are also required to submit their current public transport records to the MEC responsible for the province's public transport affairs, by 31 December 1998 (or the extended period agreed on between the MEC and the Minister of Transport).

(2) In terms of clause 4 of the Bill this record must be taken into account by the core city in performing transport planning under the Urban Transport Act, 1977. At the same time this clause also requires a core city to ensure that its transport plan for the metropolitan transport area is integrated with the land development process in the context of integrated development planning in terms of the Local Government Transition Act, 1993, and the Development Facilitation Act, 1995 (Act No 67 of 1995), or any similar or corresponding provincial laws. (These provisions also provide the transition from transport planning under the Urban Transport Act, 1977, to the integrated transport plans required by the proposed national land transport legislation.)

(3) Clause 5 of the Bill requires a local road transportation board, or, where applicable, a provincial permit board, to notify a core city in writing of any application for a permit to authorise regular passenger conveyance in its metropolitan transport area, and to request the core city for its recommendations regarding the application. The core city, furthermore, is obliged, in terms of this clause, to make its recommendations with due regard to the abovementioned record, while the board concerned, when disposing of the application, is obliged to take into account the core city's recommendations and representations in addition to the other matters referred to in the Road Transportation Act, 1977 (Act No. 74 of 1977), or any superseding provincial legislation.

2.2 In addition the Bill—

1. (1) in clause 2, provides that a municipality falling within a metropolitan transport area situated in the region of a regional services council responsible for functions regarding land use and transport planning in the region, may be designated the core city of that metropolitan transport area rather than that regional council (i.e. despite section 4(3) (a) of the Urban Transport Act, 1977)—

- if there are good and practical reasons for doing so; and

if that municipality and the regional services council have agreed thereto.

However, that municipality must co-ordinate its planning activities with those of the regional services council concerned;

2. in clause 6, limits the grounds on which a local road transportation board or provincial permit board (as the case may be) may refuse a road transport operator's application for a permit where the permit is required for the provision of a public transport service in terms of a contract awarded to the operator by a provincial tender board after completion of a process of public tendering. The limited grounds on which permit applications may be refused in terms of

clause 6 in cases of this nature, relate, broadly stated, to previous convictions for road transport offences, and prohibitions and limitations imposed by municipal by-laws in connection with the use of motor vehicles in the municipal areas concerned. Excluding those mentioned in clause 6 of the Bill, the numerous grounds on which applications for road carrier permits may be refused in terms of the existing legislation, are either inapposite or completely irrelevant vis-a-vis such a transport operator's permit application;

3. in clause 7, provides for the Director-General of the Department of Transport to take over the powers, functions and duties of the South African Roads Board under the Urban Transport Act' 1977. These powers, functions and duties mainly relate to the administration of the (national) Urban Transport Fund.

CONSULTATION

3. The principles contained in the Bill have been widely discussed with all role players in the process being followed in preparing the proposed national land transport legislation. As mentioned above, that proposed legislation has already been published for comments and consultation as early as December 1996, and has been developed, so far, in consultation with the provincial and municipal spheres of government through the MINCOM structure.

PROCEDURE

4. The view is held by the State Law Advisers that the Bill should be dealt with in accordance with the procedure provided for in section 76 of the Constitution, inasmuch as the Bill—

- is designed to regulate matters with regard to public transport, being one of the functional areas mentioned in Schedule 4 to the Constitution; and
- does not contemplate any amendment to the Constitution nor propose the imposition of any tax, levy or duty.