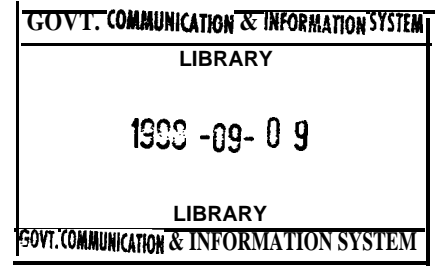


REPUBLIC OF SOUTH AFRICA

ROAD TRANSPORT APPEAL MATTERS AMENDMENT BILL

(As introduced in the National Assembly)

(MINISTER OF TRANSPORT)



[B 104-98]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP AANGELEENTHEDE BETREFFENDE PADVERVOERAPPELLE

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN VERVOER)

[W 104-98]

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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.
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BILL

To amend the Cross-Border Road Transport Act, 1998, so as to make undone, retrospectively to 1 April 1998, the repeal of the Transport Deregulation Act, 1988, thereby, amongst others, reinstating the National Transport Commission with effect from that date, and to provide for that Commission's determination of appeals under the Cross-Border Road Transport Act, 1998, noted on or after 1 April 1998 but before a date to be determined by the Minister of Transport; to amend the Transport Appeal Tribunal Act, 1998, in relation to the accountability of the Director-General of Transport, and to effect certain consequential amendments necessitated by the present state of the Republic's national land transport legislation; and to provide for incidental matters.

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

Substitution of section 34 of Act 4 of 1998

1. The following section is hereby substituted for section 34 of the Cross-Border Road Transport Act, 1998:

“Appeals

34. (1) Where the Regulatory Committee has published or otherwise made known its decision in respect of any application for the granting, renewal, amendment or transfer of a cross-border road transport permit or a cabotage permit for freight or passengers—

- (a) the applicant, if aggrieved thereby;
 - (b) any other holder of such a permit who is affected by the decision; or
 - (c) any person otherwise interested in or affected by the decision,
- may, in the prescribed manner and within the prescribed period after the decision was published or otherwise made known by the Regulatory Committee, appeal against that decision, subject to section 53(1)(b).

(2) An appeal brought in terms of subsection (1), must be lodged with and will be heard and determined by—

- (a) the Tribunal, if noted on or after a date determined for that purpose by the Minister by notice in the *Gazette*, which the Minister is hereby authorised to do;
- (b) the National Transport Commission contemplated in section 53(2)(a), if noted before that date.”

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Substitution of section 53 of Act 4 of 1998

2. The following section is hereby substituted for section 53 of the Cross-Border Road Transport Act, 1998:

“Partial repeal of Act 74 of 1977, and savings

53. (1) Subject to subsection (2), the Road Transportation Act, 1977, is hereby repealed in so far as it relates to cross-border transport.

(2) Despite subsection (1)—

- (a) all appeals in terms of the Road Transportation Act, 1977, which immediately before the commencement of this Act were pending before or lodged with the National Transport Commission in existence under section 2 of the Transport Deregulation Act, 1988 (Act No. 80 of 1988), will be disposed of by that Commission as provided for in the Road Transportation Act, 1977, as if the Road Transportation Act, 1977, had not been repealed;
- (b) the provisions of sections 8(1 A), (2) and (3) and 9(1) and (2) of the Road Transportation Act, 1977, will be applied, subject to the changes necessary in the context and in so far as those provisions are not inconsistent with this Act, with regard to all appeals brought in terms of section 34(2)(b) of this Act.”

Amendment of section 1 of Act 39 of 1998

3. Section 1 of the Transport Appeal Tribunal Act, 1998 (hereafter called the Tribunal Act). is hereby amended—

- (a) by the substitution for the definition of “Board” of the following definition: “ ‘board’ means the body which, in terms of national land transport legislation, is charged with responsibility with regard to the granting, issue, renewal, amendment and transfer of permissions’ for the operation of public land transport in the Republic;”;
- (b) by the substitution for the definition of “intraprovincial transport” of the following definition: “‘intraprovincial transport’ means public transport conducted in such manner that the passengers are picked up and set down entirely within the boundaries of a single province;”; and
- (c) by the insertion after the definition of “Minister” of the following definition: “ ‘national land transport legislation’ means legislation enacted by Parliament under the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), which governs land transport other than ‘cross-border transport’ as defined in section 1 of the Cross-Border Land Transport Act, 1998 (Act No. 4 of 1998), in each province of the Republic, whether in conjunction with a law enacted by the province’s legislature, or not;”.

Substitution of section 2 of Act 39 of 1998

4. The following section is hereby substituted for section 2 of the Tribunal Act:

“Application of Act

2. The provisions of this Act will not apply to any appeal concerning a matter arising from intraprovincial transport if, in terms of any law enacted by the legislature of the province concerned, such an appeal is to be determined by an appeal body established by or under that law or any other law of that legislature.”:

Amendment of section 11 of Act 39 of 1998

5. Section 11 of the Tribunal Act is hereby amended by the substitution for the expression “the National Land Transport Act, 1998,” of the expression “national land transport legislation”.

Amendment of section 12 of Act 39 of 1998

6. Section 12 of the Tribunal Act is hereby amended—
- (a) in subsection (1)—
 - (i) by the substitution for the expression “the National Land Transport Act, 1998,” where it occurs in the portion preceding paragraph (a), of the 5 expression “national land transport legislation”; and
 - (ii) by the substitution for the word “Board” wherever it occurs in paragraph (b), of the word “board”;
 - (b) in subsection (2), by the substitution for the expression “the National Land Transport Act, 1998,” of the expression “national land transport legislation”; 10 and
 - (c) in subsection (3), by the substitution for the word “Board” of the word “board”.

Amendment of section 13 of Act 39 of 1998

7. Section 13 of the Tribunal Act is hereby amended by the substitution for the word 15 “Board” where it occurs in paragraph (a), of the word “board”.

Amendment of section 14 of Act 39 of 1998

8. Section 14(4)(a) of the Tribunal Act is hereby amended—
- (a) by the substitution for the expression “the National Land Transport Act, 1998,” of the expression “national land transport legislation”; and 20
 - (b) by the substitution for the word “Board” of the word “board”.

Amendment of section 16 of Act 39 of 1998

9. Section 16 of the Tribunal Act is hereby amended—
- (a) by the substitution for subsection (3) of the following subsection:

“(3) All moneys received by the Tribunal [**under**] in terms of this Act 25 must be paid into the National Revenue Fund [**and the Director-General is the accounting officer of such expended moneys**].”; and
 - (b) by the addition after subsection (3) of the following subsection:

“(4) The Director-General is the accounting officer for all moneys so received and all payments made from moneys appropriated by Parlia- 30 ment for the purposes of the Tribunal.”.

Amendment of section 17 of Act 39 of 1998

10. Section 17(1) of the Tribunal Act is hereby amended by the substitution for the word “Board” where it occurs in paragraph (a), of the word “board”.

Amendment of section 18 of Act 39 of 1998

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11. Section 18(3) of the Tribunal Act is hereby amended by the substitution for the expression “the National Land Transport Act, 1998,” of the expression “national land transport legislation”.

Substitution of long title of Act 39 of 1998

12. The following long title is hereby substituted for the long title of the Tribunal Act: 40
 “To provide for the establishment of the Transport Appeal Tribunal to consider and to decide appeals noted [**under the National Land Transport Act, 1998, and under**] in terms of national land transport legislation and in terms of the Cross-Border Road Transport Act, 1998; and for matters connected therewith.”.

Short title and commencement

13. (1) This Act is called the Road Transport Appeal Matters Amendment Act, 1998.

(2) Sections 1 and 2 will be regarded and treated for **all** purposes as having come into operation on 1 April 1998.

(3) Sections 3 to 12 inclusive come into operation on the date on which the Tribunal 5 Act comes into operation.

**MEMORANDUM ON THE OBJECTS OF THE ROAD TRANSPORT
APPEAL MATTERS AMENDMENT BILL, 1998**

1.1 In the course of preparing the envisaged new national land transport legislation, the Department of Transport ("the Department") recently discovered serious *lacunae* arising from the repeal of the provisions (except section 6) of the Transport Deregulation Act, 1988 (Act No. 80 of 1988 — "the Deregulation Act"), by section 53 of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998 — "the Cross-Border Act"). Those provisions rightly should not have been repealed since their continued existence is absolutely necessary for the continued application of the Road Transportation Act, 1977 (Act No. 74 of 1977), until the law by which it is to be superseded, viz. the envisaged new national land transport legislation, has been enacted by Parliament and is brought into operation.

The repeal of section 2 of the Deregulation Act, in particular, causes great concern inasmuch as the National Transport Commission ("the Commission") which derives its existence from that section, is effectively abolished in consequence of that repeal.

1.2 Bearing in mind that one of the Commission's main functions was to determine appeals brought in terms of the Road Transportation Act, 1977, against the decisions of road transportation boards, the repeal of section 2 of the Deregulation Act essentially means that at present there is no functionary that is legally competent to determine appeals arising from the application of the Road Transportation Act, 1977, and not relating to cross-border road transport. Clause 2 of the Road Transport Appeal Matters Amendment Bill, 1998 ("the Bill"), has as its goal to remedy this untenable state of affairs through the substitution of section 53 of the Cross-Border Act in a manner that makes the repeal of, amongst others, section 2 of the Deregulation Act, undone, thereby reinstating the Commission (indeed, with retrospective effect to 1 April 1998 — see clause 13(2) of the Bill). It further may be added that the circumstances mentioned in paragraph 2 below serve as additional motivation for the reinstatement of the Commission.

2. Parliament has only very recently, i.e. on 12 August 1998, adopted the Transport Appeal Tribunal Bill, which thereafter became the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998 — "the Tribunal Act"), which establishes a special tribunal to determine appeals, amongst others, against decisions of the Regulation Committee with regard to cross-border road transport matters. It had been intended that the Tribunal Act, which is not operative yet, should come into operation on the same date as the Cross-Border Act, namely on 1 April 1998. Consequently, there also was no functionary lawfully in place since 1 April 1998 to determine appeals on cross-border road transport matters. However, with a view to remedying this shortcoming and ensuring that there is a functionary lawfully competent to determine appeals with regard to the last mentioned matters, it was considered appropriate to empower the Commission (retrospectively to 1 April 1998) for that purpose. Clause 1 of the Bill proposes to achieve this effect through an appropriate amendment of section 34 of the Cross-Border Act. (See also clause 13(2) of the Bill.)

3. The amendment of section 16 of the Tribunal Act as proposed by clause 9 of the Bill, is designed to clarify the extent of the duties and responsibility of the Director-General: Transport as the accounting officer in relation to the Transport Appeal Tribunal established by section 2 of the Tribunal Act.

4. The amendments to the Tribunal Act proposed by clauses 3 to 8 and 10, 11 and 12 of the Bill, are of a consequential or technical nature necessitated mainly by the fact that the new envisaged national land transport legislation has not yet been enacted into law.

5. The view is held by the State Law Advisers and the Department that the Bill should be dealt with in accordance with the procedure provided for in section 76 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996 — "the Constitution"), inasmuch as the Bill —

- * is designed to regulate an appeal tribunal connected with 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.