

REPUBLIC OF SOUTH AFRICA

TRANSPORT LAWS AND RELATED MATTERS AMENDMENT BILL

*(As amended by the Portfolio Committee on Transport (National Assembly) after
reconsideration of [B 30B—2012], recommitted by the National Assembly on
22 November 2012)*
(The English text is the official text of the Bill)

(MINISTER OF TRANSPORT)

[B 30D—2012]

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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 Cross-Border Road Transport Act, 1998, to empower the Cross-Border Road Transport Agency to collect toll on behalf of the South African National Roads Agency Limited; and to amend The South African National Roads Agency Limited and National Roads Act, 1998, to insert a definition; to further provide for the differentiation in respect of the amount of toll that may be levied; to provide that the regulations made by the Minister must be published by notice in the *Gazette*; to provide for the Minister to make regulations relating to specified toll-related matters; to provide for the Minister to publish draft regulations in the *Gazette* calling for public comment; to provide for certain presumptions relating to the driving, operation and use of vehicles on a toll road and the use of electronic evidence to prove an alleged contravention of the South African National Roads Agency Limited and National Roads Act; to exclude the levying and collection of toll from the ambit of the National Credit Act, 2005; to amend the Contents of the Act; and to provide for matters connected therewith.

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

Amendment of section 4 of Act 4 of 1998

1. Section 4 of the Cross-Border Road Transport Act, 1998, is hereby amended by the addition of the following subsection:

“(4) The Agency may collect toll on behalf of the South African National Roads Agency Limited in terms of an agreement, between the Agency and the South African National Roads Agency Limited, concluded under section 28(1)(a) of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998).”.

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Amendment of section 1 of Act 7 of 1998

2. Section 1 of The South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended by the insertion after the definition of “national road” of the following definition:

“ **‘owner’**, in relation to a vehicle, has the meaning ascribed to it in section 1 of the—

(a) National Road Traffic Act, 1996 (Act No. 93 of 1996); and

(b) Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998);”.

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Amendment of section 27 of Act 7 of 1998

3. Section 27 of The South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended—

- (a) by the addition in subsection (3)(b) of the following subparagraphs: 5
“(v) the means by which the passage of a vehicle beneath or through a toll plaza is identified and the liability to pay toll is recorded; and
(vi) the means of payment, including pre-payment of toll liability;”.
- (b) by the insertion in subsection (4) of the following paragraphs after paragraph (b):
“(bA) the Agency, in co-operation with the municipality contemplated in subsection (4)(b)(ii) and the province in which the proposed toll road is situated, has performed a socio-economic and traffic impact assessment pertaining to the proposed toll road which must be submitted to the Minister and made available to the province and every municipality contemplated in subsection (4)(b); 10
(bB) a notice of the publication of the report contemplated in paragraph (bA) is published in the *Gazette*, indicating the availability of such report;” and 15
- (c) by the substitution in subsection (4) for paragraph (c) of the following paragraph: 20
“(c) the Agency, in applying for the Minister’s approval for the declaration, has forwarded its proposals in that regard to the Minister together with a report on the comments and representations that have been received (if any). In that report the Agency must indicate—
(i) the outcome of the assessment contemplated in paragraph (bA); 25
(ii) the extent to which any of the matters raised in those comments and representations have been accommodated [in those proposals]; and
(iii) the steps proposed to mitigate against the impact or likely impact on alternative roads with regard to maintenance and traffic management that may result from the declaration contemplated in 30
subsection (1); and”.

Amendment of section 58 of Act 7 of 1998

4. Section 58 of The South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 35
“(1) The Minister, after consultation with the Agency and by notice in the *Gazette*, may make regulations that are not inconsistent with this Act—”;
- (b) by the insertion in subsection (1) of the following paragraphs after paragraph (d): 40
“(dA) providing for the terms and conditions applicable to the payment of toll and for the establishment of a system that permits the registration of persons liable to pay toll;
(dB) providing specifications for— 45
(i) any tolling equipment, electrical, electronic or mechanical device or a combination thereof used for the identification of vehicles on toll roads in order to record the liability to pay toll; and
(ii) the installation, maintenance and verification of the device and tolling equipment contemplated in subparagraph (i); 50
(dC) providing for—
(i) the manner in which the liability to pay toll will be recorded, including the time and the manner in which such toll must be paid; 55
(ii) the payment of toll in cash, electronically or by other method, which is subject to but not dependent on any conditions that the Agency may determine under section 27(1)(b);

- (iii) the offences and penalties applicable to the owner or user or driver of a vehicle in the event of the non-payment of toll;
- (iv) the method of notifying the owner, driver or the user of the vehicle of his or her liability to pay toll; and
- (v) the manner of recovering outstanding payment of toll; and”;
- (c) by the insertion after subsection (1) of the following subsections:
- “(1A) The regulations contemplated in subsection (1)(dA) to (dC) may provide for the issuing of directions, conditions or requirements for matters connected therewith.
- (1B) Before the Minister makes any regulation contemplated in subsection (1), the Minister must submit a draft of the proposed regulation to Parliament for comment.”; and
- (d) by the addition of the following subsection:
- “(4) Before the Minister makes any regulation, he or she must publish a draft of the proposed regulation in the *Gazette* together with a notice calling on interested persons to comment in writing within a period specified in the notice, which may not be less than four weeks from the date of publication of the notice, any objections or representations which they would like to make with the Director-General for submission to the Minister.”.

Insertion of section 59A in Act 7 of 1998

5. The following section is hereby inserted in The South African National Roads Agency Limited and National Roads Act, 1998, after section 59:

“Presumptions

- 59A.** (1) In the absence of evidence to the contrary, where it is necessary to prove who was driving, operating or using the vehicle at the time when the liability to pay toll was incurred, it shall be deemed that such vehicle was driven, operated or used by the owner of the vehicle—
- (a) in respect of any prosecution in terms of this Act relating to the driving, operation or use of a vehicle on a toll road or the payment of toll; or
- (b) in any legal proceedings instituted by the Agency for the recovery of outstanding toll monies.
- (2) For the purposes of subsection (1) and in the absence of evidence to the contrary, where the owner of the vehicle concerned is a juristic person, it shall be deemed that such vehicle was driven, operated or used as contemplated in that subsection by an employee of the owner of the vehicle in the course and scope of its business.
- (3) In a prosecution for an alleged contravention of this Act where electronic evidence is produced and if the machine producing the electronic evidence has been checked for correct working and reading by a person trained in the operation thereof, such electronic evidence upon its production shall, in the absence of evidence to the contrary, be presumed to be accurate and may be used to prove the alleged contravention.
- (4) Where in any prosecution in terms of this Act it is alleged that an offence was committed on a toll road, the road concerned shall, in absence of evidence to the contrary, be presumed to be a toll road.”.

Amendment of section 60 of Act 7 of 1998

6. Section 60 of The South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended—

- (a) by the substitution for the heading of the following heading: “**Amendment, exclusion and repeal of laws**”; and
- (b) by the addition of the following subsection: “(3) Despite the provisions of the National Credit Act, 2005 (Act No. 34 of 2005), the provisions of that Act are not applicable to the levying and collecting of toll in terms of this Act.”.

Amendment of Contents of Act 7 of 1998

7. The Contents of Act after the long title of The South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended by the insertion after “59. Limitation on legal proceedings against Agency” of the following:

“59A. Presumptions”.

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Short title and commencement

8. This Act is called the Transport Laws and Related Matters Amendment Act, 2012, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE TRANSPORT LAWS AND RELATED MATTERS AMENDMENT BILL, 2012

1. BACKGROUND

- 1.1 The South African National Roads Agency Limited (“SANRAL”) was established in terms of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) (“the SANRAL Act”). The SANRAL Act provides for the establishment of SANRAL to manage and control the Republic’s national roads system and take charge of the development, maintenance and rehabilitation of national roads within the framework of government policy.
- 1.2 The Bill has been necessitated by the development of the Gauteng Freeway Improvement Project (“GFIP”), as well as future plans for the development of road infrastructure in the Republic. Apart from the physical infrastructure, the GFIP will result in the operation of a road network that involves the utilisation of “intelligent” transport systems. An important component of the network is the electronic toll collection (“ETC”) system. The Bill is essential to enable the appropriate implementation of the ETC system.
- 1.3 The SANRAL Act came into operation on 1 April 1998. The SANRAL Act provides for the establishment of SANRAL and for the functions, powers and responsibilities of SANRAL. SANRAL, within the framework of government policy, is in the main responsible for, and is given the power to perform, all strategic planning with regard to the South African national roads system, as well as the planning, design, construction, operation, management, control, maintenance and rehabilitation of national roads for the Republic, and is responsible for the financing of all those functions in accordance with its business and financial plan, so as to ensure that government’s goals and policy objectives concerning national roads are achieved.
- 1.4 When the SANRAL Act was promulgated, the ETC was not envisaged in its current form. The SANRAL Act is not broad enough to cater for some aspects of the ETC.

2. OBJECTS OF BILL

- 2.1 The Bill will facilitate the collection of tolls and the implementation of the ETC system. These measures are essential to implement the GFIP, i.e. to upgrade transport infrastructure and public transport in the Gauteng Province and beyond, as well as other proposed projects.
- 2.2 The Bill seeks to provide more effectively for the collection of toll; to amend the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998), to empower the Cross-Border Road Transport Agency to collect toll on behalf of SANRAL; to amend the SANRAL Act by inserting a definition; to further provide for the differentiation in respect of the amount of toll that may be levied; to provide that the regulations made by the Minister must be published by notice in the *Gazette*; to provide for the Minister to make regulations relating to specified toll-related matters; to provide for the Minister to publish draft regulations in the *Gazette* calling for public comment; to provide for certain presumptions relating to the driving, operation and use of vehicles on a toll road and the use of electronic evidence to prove an alleged contravention of the SANRAL Act; to exclude the levying and collection of toll from the ambit of the National Credit Act, 2005; and to amend the contents of the SANRAL Act.

3. DISCUSSION OF BILL

- 3.1 Clause 1 seeks to amend section 4 of the Cross-Border Road Transport Act by empowering the Cross-Border Road Transport Agency to collect toll on behalf of SANRAL.

- 3.2 Clause 2 seeks to insert the definition of “owner” in order for the owner of a vehicle to be responsible for the payment of toll.
- 3.3 Clause 3 seeks to amend section 27(3)(b) of the SANRAL Act to provide a means of differentiating the amount of toll payable according to whether the toll is pre-paid depending on the use of an e-tag or some other device as compared with identification through licence number recognition.

Clause 3 also seeks to provide for the Agency, in co-operation with the municipality contemplated in subsection (4)(b)(ii) and the province in which the proposed toll road is situated, to perform a socio-economic and traffic impact assessment pertaining to the proposed toll road which must be submitted to the Minister and made available to the province and every municipality contemplated in subsection (4)(b).

Clause 3 further seeks to provide for the Agency to indicate the outcome of the socio-economic and traffic impact assessment pertaining to the proposed toll road and the steps proposed to mitigate against the impact or likely impact on the alternative roads with regard to maintenance and traffic management that may result from the declaration of a toll road, before the Minister grants approval for the declaration of the toll road.

- 3.4 Clause 4 seeks to provide for the Minister to publish regulations by notice in the *Gazette*; to provide for the Minister to make regulations relating to specified toll-related matters; to compel the Minister to submit a draft of all proposed regulations to Parliament for comment and to provide for the Minister to publish a draft of the proposed regulations in the *Gazette* calling for public comment
- 3.5 Clause 5 seeks to insert section 59A(3) in the SANRAL Act to provide for a presumption that any electronic evidence must be deemed to be correct in the absence of evidence to the contrary. This aims to facilitate law enforcement and assist in the prosecution relating to the non-payment of tolls.
- 3.6 Clause 6 seeks to amend the heading of section 60 of the SANRAL Act and provide for the exclusion of the SANRAL Act from the ambit of the National Credit Act, 2005 (Act No. 34 of 2005), in relation to the levying and collection of toll.
- 3.7 Clause 7 provides for the amendment of the Contents of the Act to reflect the insertion of section 59A.
- 3.8 Clause 8 provide for the short title and commencement of the Act.

4. CONSULTATION

- 4.1 A draft amendment Bill was published in *Gazette* No. 31715 on 19 December 2008. Two draft Bills providing for transport laws and related matters which also included similar amendments to some of the amendments in the Bill, were published in *Gazette* No. 33027 and *Gazette* No. 33028 on 15 March 2010.
- 4.2 The Bill was also circulated for inputs to the Shareholders Committee of the Road Traffic Management Corporation. Comments were received from the following institutions:
- (a) Public Entity Oversight and Border Control;
 - (b) South African Chamber of Commerce;
 - (c) South African Tourism Service Association;
 - (d) The South African Police Service;
 - (e) The Cross-Border Road Transport Agency;
 - (f) The Road Traffic Management Corporation; and
 - (g) The National Treasury.

- 4.3 The Bill was developed and finalised by the Department of Transport, in consultation with the National Treasury.

5. FINANCIAL IMPLICATIONS FOR STATE

- 5.1 The Bill is vitally necessary to enable the collection of tolls for the GFIP. A lack of appropriate legislative authority to collect tolls would place the entire project at risk. The non-collection of tolls may impact negatively on the ability of the other state-owned enterprises to raise capital for their infrastructure programmes, and thus the need for the Bill must also be seen in the context of government's plans to fund its envisaged infrastructure programme. SANRAL has issued bonds to fund the project of R24 billion (initial capital costs amounting to approximately R20,6 billion plus capitalised interest amounting to approximately R3,4 billion) that need to be repaid from toll revenue. Failure to collect tolls and repay the bonds would have very serious financial implications for SANRAL and also for national government, which provided a guarantee in respect of most of the SANRAL bonds.
- 5.2 The financial consequences of ineffective collection of tolls to SANRAL and government, due to the guarantee, would be both reputational and costly. Inability to collect revenue would damage the credit reputation amongst investors, who may price the bonds higher to cover this risk or sell the bonds. This in turn would have a negative impact on both SANRAL's and possibly the government's credit ratings. Furthermore, the inability to collect the toll at predicted levels would result in lower revenue available to service debt and force further debt to be incurred to fund the shortfall. This would be costly in terms of interest paid as well as the credit reputational impact explained earlier.
- 5.3 The financial implications for the overall project also include future maintenance costs, road rehabilitation and operational costs, servicing of debt (*interest*) and other toll-related costs. Therefore, ineffective toll collection would result in these costs to be funded from other government resources in future, thereby reducing government's ability to meet its disparate demands.

6. PARLIAMENTARY PROCEDURE

- 6.1 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 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.
- 6.2 Furthermore, the State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.