

REPUBLIC OF SOUTH AFRICA

TRANSPORT AGENCIES GENERAL LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75);
explanatory summary of Bill published in Government Gazette No 30115 of 24 July 2007)
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

[B 27—2007]

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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, so as to provide anew for the appointment of members of the Board and a Chief Executive Officer by the Minister; and to provide for the conclusion of a performance agreement between the Minister and the Agency;
 - the South African Maritime Safety Authority Act, 1998, so as to provide for the conclusion of a performance agreement between the Minister and the Authority; to provide anew for the appointment of members of the Board and the Chief Executive Officer by the Minister; to provide for representation of the Department of Transport on the Board; to facilitate the filling of casual vacancies on the Board; and to allow the Minister to temporarily extend the term of office of a member on an outgoing Board, if necessary;
 - The South African National Roads Agency Limited and National Roads Act, 1998, so as to provide anew for the appointment of the Chief Executive Officer by the Minister;
 - the Transport Appeal Tribunal Act, 1998, so as to provide anew for the appointment of members to the Tribunal by the Minister;
 - the South African Civil Aviation Authority Act, 1998, so as to provide for representation by the Department of Transport on the Board and for the appointment of the Chief Executive Officer by the Minister; and to facilitate the filling of casual vacancies on the Board;
 - the Road Traffic Management Corporation Act, 1999, so as to provide anew for the appointment of members of the Board by the Shareholders Committee;
 - the National Railway Safety Regulator Act, 2002, so as to provide anew for the appointment of members of the Board by the Minister and to allow the Minister to temporarily extend the term of office of a member on an outgoing Board, if necessary;
- and to provide for matters connected therewith.

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

Amendment of section 5 of Act 4 of 1998

1. Section 5 of the Cross-Border Road Transport Act, 1998, is hereby amended by—
 - (a) the deletion in subsection (2) of the word “and” at the end of paragraph (b) and the insertion after that paragraph of the following paragraphs:
 - “(bA) the Chief Executive Officer, by virtue of holding that office;
 - (bB) if the Minister specifies an office in the Department for the purposes of this subsection, the person for the time being holding that office; and”;
 - (b) the substitution in subsection (2) for paragraph (c) of the following paragraph:
 - “(c) not more than eight other members, of whom not more than—
 - (i) two must be appointed on account of their expertise in cross-border road transport of freight; and
 - (ii) two must be appointed on account of their expertise in cross-border road transport of passengers.”;
 - (c) the substitution for subsection (3) of the following subsection:
 - “(3) (a) The members of the Board contemplated in subsection (2)(c)(i) and (ii) must not be persons who are employed by the State.
 - (b) Before the members of the Board contemplated in subsection (2)(a), (b) or (c) are appointed, the Minister must, through the media, invite nominations from members of the public of persons with an interest in and knowledge of the cross-border road transport industry or the labour and consumer sector.
 - (c) Subject to subsection (2)(c)(i) and (ii), the Board must include members who—
 - (a) have experience in business;
 - (b) have legal knowledge and the relevant expertise in corporate governance; or
 - (c) are knowledgeable about the cross-border road transport industry, financial management or economic analysis.”; and
 - (d) the substitution for subsection (4) of the following subsection:
 - “(4) The Minister may nominate a representative to participate in a non-voting capacity in the deliberations of any meeting of the [Board or] Regulatory Committee.”.

Amendment of section 7 of Act 4 of 1998

2. Section 7 of the Cross-Border Road Transport Act, 1998, is hereby amended by the addition of the following subsection:
 - “(4) Notwithstanding subsections (1), (2) and (3), the Minister may extend the term of office of any member of the Board by such further period as it may take to appoint a new member to the Board.”.

Substitution of section 14 of Act 4 of 1998

3. The following section is hereby substituted for section 14 of the Cross-Border Road Transport Act, 1998:

“**Staff of Agency** 45

14. (1) (a) The Minister must, on the recommendation of the Board, appoint a Chief Executive Officer.
- (b) The Chief Executive Officer holds office on such terms and conditions including those relating to remuneration and allowances as the Minister, after considering the recommendations of the Board and in consultation with the Minister of Finance, may determine in writing.
- (c) The Chief Executive Officer holds office for a period not exceeding five years as specified in the letter of appointment and is eligible for reappointment.

(d) The Chief Executive Officer manages the Agency subject to the control and directions of the Board.

(2) The Chief Executive Officer must, subject to the approval of the Board, appoint such other staff as may be necessary to provide the required administrative, secretarial, research and technical assistance to the Agency and the Board.

(3) The staff of the Agency receives such remuneration, allowances and other employment benefits as the Board may determine in consultation with the Minister and the Minister of Finance.”.

Insertion of section 22A in Act 4 of 1998

4. The following section is hereby inserted after section 22 of Cross-Border Road Transport Act, 1998:

“Performance agreement

22A. (1) The Minister and the Agency must enter into a written performance agreement relating to—

- (a) the State’s requirements in respect of the Agency’s scope of business, efficiency and financial performance, and achievement of objectives;
- (b) the principles to be followed by the Agency for the purposes of business planning;
- (c) such measures as may be necessary to protect the financial soundness of the Agency;
- (d) the principles to be followed at the end of a financial year in respect of any surplus in the accounts of the Agency; and
- (e) any other matter relating to the performance of the Agency’s functions under this Act.

(2) The Minister and the Agency may in writing amend the performance agreement from time to time.

(3) The Minister must publish the performance agreement in the *Gazette* and any amendment thereto must be so published at least 30 days prior to that amendment coming into operation.

(4) A copy of the performance agreement must be open to inspection by the public at the head office of the Agency during business hours.

(5) The Minister and the Agency must, before the finalisation of the performance agreement or amendment thereof, on any matter that may affect them, consult with the relevant stakeholders in the cross-border transport industry.”.

Insertion of section 6A in Act 5 of 1998

5. The following section is hereby inserted after section 6 of the South African Maritime Safety Authority Act, 1998:

“Performance agreement

6A. (1) The Minister and the Authority must enter into a written performance agreement relating to—

- (a) the State’s requirements in respect of the Authority’s scope of business, efficiency and financial performance, and achievement of objectives;
- (b) the principles to be followed by the Authority for the purposes of business planning;
- (c) such measures as may be necessary to protect the financial soundness of the Authority;
- (d) the principles to be followed at the end of a financial year in respect of any surplus in the accounts of the Authority; and
- (e) any other matter relating to the performance of the Authority’s functions under this Act.

(2) The Minister and the Authority may in writing amend the performance agreement from time to time.

(3) The Minister must publish the performance agreement in the *Gazette* and any amendment thereto must be so published at least 30 days prior to that amendment coming into operation.

(4) A copy of the performance agreement must be open to inspection by the public at the head office of the Authority during business hours.

(5) The Minister and the Authority must, before the finalisation of the performance agreement or amendment thereof, on any matter which may affect them, consult with the relevant stakeholders in the maritime industry.”.

Amendment of section 12 of Act 5 of 1998

6. Section 12 of the South African Maritime Safety Authority Act, 1998, is hereby amended by—

(a) the insertion in subsection (1) after paragraph (b) of the following paragraph:

“(bA) if the Minister specifies an office in the Department for the purposes of this subsection, the person for the time being holding that office;”; and

(b) the substitution for subsection (4) of the following subsection:

“(4) The Minister may appoint a person as a member only if the Minister is satisfied that the person has suitable expertise in one or more of the following:

(a) International shipping;

(b) domestic shipping;

(c) maritime law;

(d) corporate governance;

(e) financial management;

(f) marketing and promotion;

(g) business;

(h) maritime infrastructure;

(i) economic analysis;

(j) current and emerging technologies;

(k) environmental management.”.

Substitution of section 13 of Act 5 of 1998

7. The following section is hereby substituted for section 13 of the South African Maritime Safety Authority, 1998:

“Period of office of members

13. (1) Subject to this Chapter, a member holds office for a period of three years as from the date of appointment of such member, and may be re-appointed for a further period not exceeding three years, in which case the procedure contemplated in section 12(3) does not apply.

(2) Notwithstanding subsection (1), the Minister may extend the term of office of any member by such further period as it may take to finalise the appointment of a new Board.”.

Amendment of section 15 of Act 5 of 1998

8. Section 15 of the South African Maritime Safety Authority Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) [Subject to section 12(2) and (4), a] A member may not engage in any paid employment that will conflict with the proper performance of his or her functions as a member.”.

Amendment of section 22 of Act 5 of 1998

9. Section 22 of the South African Maritime Safety Authority Act, 1998, is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:

“(1) (a) The Minister must, on the recommendation of the Board, 5
appoint a Chief Executive Officer.

(b) The Chief Executive Officer holds office on such terms and
conditions including those relating to remuneration and allowances as
the Minister, after considering the recommendations of the Board and in
consultation with the Minister of Finance, may determine in writing.”; 10
and

(b) the deletion of subsections (5) and (6).

Repeal of section 24 of Act 5 of 1998

10. Section 24 of the South African Maritime Safety Authority Act, 1998, is hereby repealed. 15

Substitution of section 25 of Act 5 of 1998

11. The following section is hereby substituted for section 25 of the South African Maritime Safety Authority Act, 1998:

“Resignation

25. The Chief Executive Officer may resign by notice in writing to the 20
Board and the Minister.”.

Repeal of section 11 of Act 7 of 1998

12. Section 11 of The South African National Roads Agency Limited and National Roads Act, 1998, is hereby repealed.

Amendment of section 12 of Act 7 of 1998

13. Section 12 of The South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended by—

(a) the substitution for subsection (2) of the following subsection:

“(2) The Board consists of—

(a) the Chairperson; 30

(b) if the Minister specifies an office in the Department for the
purpose of this subsection, the person for the time being
holding that office;

(c) a senior officer of the Department of Finance nominated by the
Director-General of that Department; 35

(d) the Chief Executive Officer, by virtue of holding that office;
and

(e) four other persons having special qualifications, skills, exper-
tise or experience in matters concerning national roads,
corporate governance, financial management, business or
operations of the Agency.”; and 40

(b) the substitution for subsection (3) of the following subsection:

“(3) (a) The members of the Board contemplated in subsection (2)(a) and
(e) are appointed by the Minister. 45

(b) Before the members of the Board contemplated in subsection (2)(a) and
(e) are appointed, the Minister must, through the media, invite nominations
from members of the public of persons with an interest in and knowledge of
national roads.”.

Amendment of section 13 of Act 7 of 1998

14. Section 13 of The South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended by—

- (a) the substitution in subsection (1) for paragraph (a) of the following paragraph:
 - “(a) holds office for a period of three years as from the date of appointment of such member, and may be re-appointed for a further period not exceeding three years, in which case the procedure contemplated in section 12(3)(b) does not apply; and”; and
- (b) the addition of the following subsection:
 - “(5) Notwithstanding subsection (1)(a), the Minister may extend the term of office of any member of the Board by such further period as it may take to finalise the appointment of a new Board.”.

Amendment of section 14 of Act 7 of 1998

15. Section 14 of The South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

- “(a) A vacancy in the [office of an appointed member] Board must be filled [by the Minister] as soon as possible through the appointment of another member who meets the requirements stipulated in section [12(3)] 12 for the office that has become vacant.”.

Amendment of section 19 of Act 7 of 1998

16. Section 19 of The South African National Roads Agency Limited and National Roads Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) (a) The Minister must, on the recommendation of the Board, appoint a Chief Executive Officer.
- (b) The Chief Executive Officer holds office for a period not exceeding five years as specified in the letter of appointment, and is eligible for re-appointment.
- (c) The Chief Executive Officer holds office on such terms and conditions including those relating to remuneration and allowances as the Minister, after considering the recommendations of the Board and in consultation with the Minister of Finance, may determine in writing.”.

Amendment of section 4 of Act 39 of 1998

17. Section 4 of the Transport Appeal Tribunal Act, 1998, is hereby amended by—

- (a) the substitution in subsection (2) for paragraph (b) of the following paragraph:
 - “(b) through the media, invite members of the public to nominate persons who comply with the criteria contemplated in paragraph (a) for appointment as members to the Tribunal.”; and
- (b) the deletion of subsection (3).

Amendment of section 8 of Act 40 of 1998

18. Section 8 of the South African Civil Aviation Authority Act, 1998, is hereby amended by—

- (a) the substitution for subsection (2) of the following subsection:
 - “(2) The Board consists of—
 - (a) not more than seven members, appointed by the Minister, of whom one must be—
 - (i) the non-executive chairperson;
 - (ii) if the Minister specifies an office in the Department for the purposes of this subsection, the person for the time being holding that office;”; and
 - (iii) the Chief Executive Officer, by virtue of that office.”.

- (b) the insertion after subsection (2) of the following subsection:
- “(2A) The Minister may appoint a person as a member only if the Minister is satisfied that the person has suitable expertise in one or more of the following:
- (a) International civil aviation;
 - (b) domestic civil aviation;
 - (c) corporate governance;
 - (d) financial management;
 - (e) business;
 - (f) economic analysis;
 - (g) environmental management;
 - (h) aviation infrastructure.”; and
- (c) the substitution for subsection (6) of the following subsection:
- “(6) Before the members of the Board contemplated in subsection (2)(a)(i), (ii) and (iii) are appointed, the Minister must, through the media, invite nominations from members of the public of persons with an interest in and knowledge of the aviation industry or the labour and consumer sectors.”.

Amendment of section 9 of Act 40 of 1998

19. Section 9 of the South African Civil Aviation Authority Act, 1998, is hereby amended by—

- (a) the substitution for subsection (1) for the following subsection:
- “(1) An appointed member of the Board—
- (a) holds office for a period not exceeding three years, on the conditions determined by the Minister upon appointment of such member; and
 - (b) may be re-appointed for a further period not exceeding three years, in which case the procedure contemplated in section 8(6) does not apply.”; and
- (b) the addition of the following subsection:
- “(8) Notwithstanding subsection (1), the Minister may extend the term of office of any appointed member by such further period as it may take to finalise the appointment of a new Board.”.

Amendment of section 11 of Act 40 of 1998

20. Section 11 of the South African Civil Aviation Authority Act, 1998, is hereby amended by—

- (a) the substitution for subsection (1) of the following subsection:
- “(1) (a) The Minister must, on the recommendation of the Board, appoint a Chief Executive Officer.
- (b) The Chief Executive Officer holds office for a period not exceeding five years as specified in the letter of appointment, and is eligible for re-appointment.
- (c) The Chief Executive Officer holds office on such terms and conditions including those relating to remuneration and allowances as the Minister, after considering the recommendations of the Board and in consultation with the Minister of Finance, may determine in writing.”; and
- (b) the deletion of subsection (2).”.

Amendment of section 8 of Act 20 of 1999

21. Section 8 of the Road Traffic Management Corporation Act, 1999, is hereby amended by—

- (a) the substitution for subsection (10) of the following subsection:
- “(10) Before the members of the Board are appointed, the Shareholders Committee must, through the media, invite members of the public to nominate persons who comply with the criteria contemplated in subsection (2).”;

- (b) the substitution for subsection (12) of the following subsection:
- “(12) An appointed member—
- (a) holds office for a period not exceeding three years, on the conditions determined by the Shareholders Committee on appointment of such member; and

(b) may be re-appointed for a further period not exceeding three years, in which case the procedure contemplated in subsection (10) does not apply.”; and
- (c) by the insertion after subsection 12 of the following subsection:
- “(12A) Notwithstanding subsection (12), the Shareholders Committee may extend the term of office of any member of the Board for such further period as it may take to finalise the appointment of a new Board.”.

Amendment of section 8 of Act 16 of 2002

22. Section 8 of the National Railway Safety Regulator Act, 2002, is hereby amended by—

- (a) the substitution in subsection (5) for paragraph (b) of the following paragraph:
- “(b) The Board consists of—
- (i) the Chief Executive Officer, by virtue of holding that office;

(ii) if the Minister specifies an office in the Department for the purposes of this subsection, the person for the time being holding that office;

(iii) the Director-General of the Department of Labour and the National Commissioner of the Department of Safety and Security; and

(iv) subject to paragraph (a), not more than nine other persons representing the railway industry, organised labour and the community.”;
- (b) the insertion in subsection (5) after paragraph (b) of the following paragraph:
- “(c) The Director-General and the National Commissioner contemplated in paragraph (b)(iii) may designate any senior official in his or her department to act in his or her stead as member of the Board.”;
- (c) the substitution for subsection (7) of the following subsection:
- “(7) Before the members of the Board are appointed, the Minister must, through the media, invite members of the public to nominate persons who comply with the criteria contemplated in subsection (5).”;
- (d) the addition to subsection (13) of the following paragraph:
- “(c) Notwithstanding paragraph (a), the Minister may extend the term of office of any member of the Board for such further period as it may take to finalise the appointment of a new Board.”; and
- (e) the substitution in subsection (14) for paragraph (a) of the following paragraph:
- “(a) If a director dies or vacates office, the Minister may [, subject to subsection (7),] appoint another person as a director.”.

Short title and commencement

23. This Act is called the Transport Agencies General Laws Amendment Act, 2007, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE TRANSPORT AGENCIES GENERAL LAWS AMENDMENT BILL, 2007

1. BACKGROUND

- 1.1 The following are some of the Public Entities under the control of the Department of Transport: The Cross-Border Road Transport Agency; the South Africa Maritime Safety Authority; the South African National Roads Agency Limited; the Transport Appeal Tribunal; the South African Civil Aviation Authority; the Road Traffic Management Corporation; and the Railway Safety Regulator.
- 1.2 Each of these Entities has been established by a separate Act of Parliament. Each of these Acts provides for the appointment of a Board for each of these Entities. The procedures and processes provided for in these Acts are cumbersome and often make it difficult for the members of the specific board to be appointed timeously. The Minister of Transport has therefore given instructions for the review of these procedures and processes.

2. OBJECTS OF BILL

- 2.1 The principal objects of the Bill are to amend the following Acts:
 - (a) The Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998);
 - (b) the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998);
 - (c) The South African National Roads Agency Limited and National Road Act, 1998 (Act No. 7 of 1998);
 - (d) the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998);
 - (e) the South African Civil Aviation Authority Act, 1998 (Act No. 40 of 1998);
 - (f) the Road Traffic Management Corporation Act, 1999 (Act No. 20 of 1999); and
 - (g) the National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002).
- 2.2 The objects of the proposed amendments are —
 - (a) to provide for the appointment of members to the various boards by the Minister;
 - (b) to streamline the processes and procedures with reference to the appointment of members to the various boards;
 - (c) to provide for the appointment of Chief Executive Officers by the Minister on the recommendation of the relevant boards;
 - (d) to provide for the filling of casual vacancies on the boards;
 - (e) to provide for the conclusion of performance agreements between the Minister and the Entities where such agreements do not exist.
- 2.3 The Bill further provides for —
 - (a) the extension of terms of office of members of the Boards when necessary in order to finalise the process of appointment of new members; and
 - (b) the deletion of certain obsolete provisions.

3. CONSULTATION

The following bodies were consulted:

- (a) Cross-Border Road Transport Agency.
- (b) South African Maritime Safety Authority.
- (c) The South African National Roads Agency Limited.
- (d) Transport Appeal Tribunal.
- (e) South African Civil Aviation Authority.
- (f) Road Traffic Management Corporation.
- (g) Railway Safety Regulator.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department of Transport are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 5.2 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.