

REPUBLIC OF SOUTH AFRICA

CROSS-BORDER ROAD TRANSPORT AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. 30485 of 23 November 2007)
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

[B 51—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 insert a Table of Contents; to amend and insert certain definitions; to authorise the Cross-Border Road Transport Agency to levy and collect tolls on behalf of the South African National Roads Agency Ltd; to further regulate the granting of permits; to provide for transformation in the cross-border road transport industry; to provide for special emergency measures; to update references to traffic legislation; and to create certain offences; to amend certain provisions of the National Land Transport Transition Act, 2000, so as to effect certain consequential amendments; and to provide for matters connected therewith.

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

Insertion of Table of Contents in Act 4 of 1998

1. The following Table of Contents is hereby inserted in the Cross-Border Road Transport Act, 1998 (hereinafter referred to as the principal Act), before Part 1: 5

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SCHEDULE 1.

Amendment of section 1 of Act 4 of 1998

2. Section 1 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of the definition of “**cabotage**” of the following paragraph: 20
 - “(a) the onloading [**or**] and offloading of freight or passengers between two points in the Republic; or”;
- (b) by the substitution for the definition of “**cross-border road transport**” of the following definition: 25
 - “**‘cross-border road transport’** means the transport of passengers and their personal effects or freight for reward or [**the transport of freight**] in the course of an industry, trade or business, to or from the Republic, crossing or intending to cross its borders into the territory of another state or in transit across the Republic or the territory of another state with a vehicle on a public road;”;
- (c) by the substitution for the definition of “**foreign carrier**” of the following definition: 30
 - “**‘foreign carrier’** means a carrier who undertakes cross-border road transport or cabotage with a vehicle which is registered in a state other than the Republic;”;
- (d) by the substitution for paragraphs (a) and (b) of the definition of “**permit**” of the following paragraphs, respectively:
 - “(a) a cabotage permit issued in respect of a vehicle for a maximum period of [**three months, six months or one year**] five years or for a fixed number of journeys; 40
 - (b) a cross-border road transport permit issued in respect of a vehicle for a maximum period of [**three months, six months or one year**] five years or for a fixed number of journeys authorising the transport of freight or passengers on specified routes; or”;
- (e) by the substitution for the definition of “**reward**” of the following definition: 45
 - “**‘reward’** means any reward or compensation whether monetary or otherwise received in terms of a contract concluded for the hiring of a vehicle and a driver or the hiring of a vehicle and the separate hiring of a driver;”;
- (f) by the substitution for the definition of “**unauthorised transport**” of the following definition: 50
 - “**‘unauthorised transport’** means transport with a vehicle on a public road [**without an applicable permit or in conflict with the permit conditions**] in contravention of this Act; and”;

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- (g) by the substitution for the definition of “vehicle” of the following definition:
- “**‘vehicle’** means—
- (a) in relation to cross-border freight road transport, any mechanically-propelled road vehicle[—
 - (i) or combination of vehicles which is constructed, adapted or used for the carriage of freight[, **excluding a semi-trailer and trailer in the case of an articulated vehicle; and**
 - (ii) **which either by itself or as part of an articulated vehicle]** and which exceeds a maximum gross mass of 3 500 kg;
 - (b) in relation to cross-border passenger road transport, any mechanically-propelled road vehicle which is constructed or adapted for the conveyance of passengers or any other vehicle which is used to convey passengers; and
 - (c) in relation to cabotage, any mechanically-propelled road vehicle and, in the case of **[an articulated vehicle]** a combination of vehicles, also a trailer and semi-trailer, which are regarded as separate vehicles;”.

Amendment of section 4 of Act 4 of 1998

3. Section 4 of the principal Act is hereby amended by the addition of the following subsection:
- “(4) The Agency may levy and collect toll on behalf of the South African National Roads Agency Limited in the manner contemplated in section 28 of the South African National Roads Agency and National Roads Act, 1998 (Act No. 7 of 1998).”.

Amendment of section 23 of Act 4 of 1998

4. Section 23 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:
- “(b) regulate access to the market by the road transport freight and passenger industry in respect of cross-border road transport and cabotage by issuing permits;”.

Amendment of section 25 of Act 4 of 1998

5. Section 25 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) No person may undertake cross-border road transport or, subject to section 31, cabotage, unless he or she is the holder of a permit.”.

Amendment of section 27 of Act 4 of 1998

6. Section 27 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Regulatory Committee must take the following into consideration in making a decision in relation to any application for the granting, renewal[, **transfer**] or amendment of permits for cross-border freight road transport based on the information presented to it by the Chief Executive Officer.”;
 - (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) whether the applicant **[complies]** and the vehicle comply with the relevant provisions of the National Road Traffic Act, **[1989 (Act No. 29 of 1989)]** 1996 (Act No. 93 of 1996);”;
 - (c) by the deletion in subsection (1) of the word “and” at the end of paragraph (e) and the insertion of the following paragraphs after paragraph (e):

“(eA) whether a South African carrier has submitted a valid tax clearance certificate from the South African Revenue Services indicating that the applicant’s tax affairs are in order;

- (eB) any conditions, factors or criteria specified in a relevant agreement contemplated in section 2 or specified or determined by a joint committee or similar body in terms of such an agreement;”;
- (d) by the insertion of the following subsection after subsection (1):
 - “(1A) Where the applicant is a South African carrier the Board must take into account—
 - (a) the promotion of small business;
 - (b) the empowerment of persons historically disadvantaged by unfair discrimination; and
 - (c) any relevant code of good practice or transformation charter published in terms of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).”;
- (e) by the addition of the following subsection:
 - “(3) In the case of a combination of vehicles, a single permit must be issued for the truck-tractor and its trailers and semi-trailers, but not in the case of cabotage, where separate permits must be issued in accordance with section 31(3).”.

Amendment of section 28 of Act 4 of 1998

- 7. Section 28 of the principal Act is hereby amended—
 - (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 - “The Regulatory Committee must take the following into consideration in making its decision in relation to any application for the granting, renewal[, **transfer**] or amendment of permits for cross-border passenger road transport based on the information presented to it by the Chief Executive Officer:”;
 - (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 - “(a) the considerations referred to in section 27(1)(a), (b), (d), [**and**] (e), (eA) and (eB) and (1A);”;
 - (c) by the substitution in subsection (1) for paragraph (e) of the following paragraph:
 - “(e) the ability of the applicant to provide the particular service efficiently and effectively;”.

Amendment of section 30 of Act 4 of 1998

- 8. Section 30 of the principal Act is hereby amended—
 - (a) by the substitution for subsection (1) of the following subsection:
 - “(1) The Regulatory Committee may, subject to the provisions of subsections (2) and (3) where—
 - (a) a permit holder or a person in his or her employ has been convicted of a road transport or road traffic offence in the Republic or in a state with which an agreement as contemplated in section 2(1), has been concluded;
 - (b) in the opinion of the Regulatory Committee, a permit holder has not complied with the conditions of the permit; or
 - (c) a permit holder has ceased to operate the services or a part of such services authorised by the permit,
 - of its own accord or upon a request from the state with which such an agreement has been concluded, take one or more of the following steps:
 - [(a)](i) withdraw or suspend for such period as it may deem fit, any permit granted by it;
 - (b) **revoke the permit** subject to such conditions as may be imposed;
 - [(c)](ii) declare such permit-holder either permanently or for a specified period of time unfit to apply for a permit;
 - [(d)](iii) amend the conditions and requirements applicable to the permit held by the permit-holder, or determine such new conditions and requirements as the Regulatory Committee may deem fit.”;

(b) by the addition of the following subsection:

“(7) Where the Regulatory Committee decides to follow any of the steps in subsection (1), the Regulatory Committee must notify the permit holder of the right to appeal in terms of section 34 and of the right to request reasons.”.

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Amendment of section 31 of Act 4 of 1998

9. Section 31 of the principal Act is hereby amended—

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

“(1) Cabotage is prohibited, except as specifically allowed in subsection (2).”;

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(b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) it is satisfied that—

(i) there is no South African carrier who can provide a similar service;

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(ii) the granting of the permit will not be in conflict with transport plans prepared in terms of Part 7 of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000); and

(iii) [where] lifting the prohibition is in the best interest of the Republic.”; and

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(c) by the substitution for subsection (3) of the following subsection:

“(3) Where cabotage is permitted, any truck-tractor and trailer and semi-trailer used in combination for the purposes of such transport, [must] may be registered in [the same country] different countries, but a separate permit is required for each such truck-tractor, trailer and semi-trailer.”.

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Amendment of section 32 of Act 4 of 1998

10. Section 32 of the principal Act is hereby amended—

(a) by the substitution in paragraph (a) for the words preceding subparagraph (i) of the following words:

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“consider applications, in accordance with the prescribed procedure, for the granting, renewal[, transfer] or amendment of—”;

(b) by the deletion in paragraph (a) of the word “and” at the end of subparagraph (ii); and

(c) by the addition to paragraph (a) of the following subparagraphs:

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“(iii) cabotage permits for a maximum of 14 days to foreign carriers who have not transgressed a prescribed points demerit threshold;

(iv) permits for a maximum of three months where the application relates to the transporting of passengers who are employees, workers, contractors or agents of the applicant being transported in the course of the applicant’s industry, trade or business; and”.

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Amendment of section 33 of Act 4 of 1998

11. Section 33 of the principal Act is hereby amended—

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

“(1) The Regulatory Committee must, before considering any application for the granting[, renewal, transfer] or amendment of a permit [issued for either three months, six months or one year] authorising cabotage or for the granting[, renewal, transfer] or amendment of a [three month, six month, or one year] permit for cross-border passenger road transport, except where the application relates to passengers who are employees, workers, contractors or agents of the applicant being transported in the course of the applicant’s industry, trade or business, publish in the *Gazette* the particulars of any application as may be prescribed and invite any person to make representations in the manner and within the time prescribed, in respect of such application, except where the agreement provides otherwise and

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subject to **[the provisions of subsection]** subsections (1A) and (2).”;
and

(b) by the insertion of the following subsection after subsection (1):

“(1A) The Regulatory Committee may publish in the same manner an application for renewal of a permit contemplated in subsection (1), and must do so if the conditions or requirements of the permit are to be amended in the process.”.

Amendment of section 34 of Act 4 of 1998, as substituted by section 1 of Act 70 of 1998

12. Section 34 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

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

Amendment of section 35 of Act 4 of 1998

13. Section 35 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of the word “and” at the end of paragraph (i);

(b) by the substitution in subsection (1) for paragraph (j) of the following paragraph:

“(j) **[any other designated stakeholder]** provincial and local authorities; and”; and

(c) by the addition to subsection (1) of the following paragraph:

“(k) any other designated stakeholder.”.

Amendment of section 37 of Act 4 of 1998

14. Section 37 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) The **[Board]** Chief Executive Officer must appoint the national Road Transport Inspectorate, consisting of the national road transport inspectors.

(b) Section 14(3) applies to national road transport inspectors appointed in terms of paragraph (a).”.

Amendment of section 38 of Act 4 of 1998

15. Section 38 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (e) of the following paragraph:

“(e) confiscate a permit which authorises cross-border road transport or cabotage if the vehicle is so defective as to be a possible danger to persons or property and must hand over the permit to the Chief Executive Officer;”; and

(b) by the substitution in subsection (1) for paragraph (h) of the following paragraph:

“(h) impound a vehicle which is reasonably suspected of being or having been used for [cross-border road transportation contrary to the Act or an agreement] unauthorised transport;”.

Amendment of section 40 of Act 4 of 1998

16. Section 40 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (y) of the following paragraph:

“(y) is the registered owner of a vehicle and allows cross-border road transport or cabotage without a permit;”; and

(b) by the substitution in subsection (1) for paragraph (zA) of the following paragraph:

- “(zA) **[contravenes or fails to comply with any provision of this Act, if such contravention or failure is not elsewhere declared an offence,]** cedes, alienates, hires out or hires the authority conferred by a permit in contravention of section 47(7);”;
- (c) by the addition of the following paragraph in subsection (1) after paragraph (zA): 5
- “(zB) contravenes or fails to comply with any provision of this Act if such contravention or failure is not elsewhere declared an offence;”;
- (d) by the addition of the following subsection: 10
- “(2) Whenever a person is charged with an offence in terms of subsection (1)(a), proof that the person has picked up or set down passengers by means of a vehicle within one kilometer of an international border will, in the absence of evidence to the contrary which raises reasonable doubt, be sufficient evidence that the person has undertaken cross-border road transport.”. 15

Amendment of section 41 of Act 4 of 1998

17. Section 41 of the principal Act is hereby amended by the substitution for the expression “unauthorised road transport”, wherever it occurs, in subsection (1) of the expression “unauthorised transport”. 20

Amendment of section 44 of Act 4 of 1998

18. Section 44 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person in the employ of the Board, **as contemplated in section 14**, is not personally liable for any damage caused by reason of any act done or omitted to be done in good faith by that person.”. 25

Amendment of section 45 of Act 4 of 1998

19. Section 45 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister, in consultation with the Board may, subject to **[the provisions of]** subsection (2), devise a points demerit system, based on contraventions of this Act **[as well as contraventions contemplated in]** and of the National Road Traffic Act, **[1989]** 1996 (Act No. 93 of 1996), and may devise such penalties[,] as may be prescribed.”. 30

Insertion of section 46A in Act 4 of 1998 35

20. The following section is hereby inserted in the principal Act after section 46:

“Special emergency measures

46A. (1) The Minister may, after consulting the Regulatory Committee, the Member of the Executive Council of the relevant province responsible for public transport and the South African Police Services, by notice in the *Gazette*, declare an area in which the special measures provided for in this section will apply, where he or she is of the opinion that this is necessary to normalize the situation in the area characterised by violence, unrest or instability. 40

(2) The Minister may make regulations providing that the operation of any specified permit is, or all permits are, temporarily suspended in so far as they authorise cross-border road transport or cabotage in such an area or part thereof, or on a specified route or routes in that area, for a period not exceeding 21 days. 45

- (3) Regulations under subsection (2) may provide that the contravention thereof constitute an offence and may prescribe penalties in respect thereof.
- (4) Before making regulations under subsection (2), the Minister must cause a notice to be published in the *Gazette* or in a newspaper circulating in the declared area, stating—
- (a) a brief description of the nature and purpose of the intended action;
 - (b) the period for which the proposed regulations will be in force;
 - (c) that interested or affected persons may request reasons for the proposed regulations;
 - (d) that any interested or affected persons may make representations;
 - (e) the time within which representations may be made, which may not be less than 24 hours;
 - (f) the address to which representations must be submitted; and
 - (g) the manner in which representations may be made.
- (5) The Minister must consider any representations received under subsection (4) before making regulations under subsection (2).”.

Amendment of section 47 of Act 4 of 1998

21. Section 47 of the principal Act is hereby amended by the addition of the following subsections:

- “(6) All holders of permits which are valid for more than one year, must submit to the Regulatory Committee annually, together with the registration certificate mentioned in subsection (2)—
- (a) a valid roadworthy certificate for the vehicle;
 - (b) where it is a condition of the permit that the holder must purchase insurance, proof that such insurance is still in force in respect of the vehicle and that all premiums have been paid;
 - (c) proof that other conditions of the permit are being met, if required by the Regulatory Committee; and
 - (d) any other prescribed requirement,
- failing which the permit shall lapse on the date of lapsing of such registration certificate and the holder must return it to the Chief Executive Officer within 10 days of such lapsing by delivering it by hand or by registered post.
- (7) The authority conferred by a permit may not—
- (a) be ceded or otherwise alienated by the holder of the permit, and no person may be a party to such a cession or alienation; or
 - (b) be hired out by the holder of the permit or be hired by any other person, and any such cession, alienation or hiring of a permit shall be of no legal force or effect.”.

Amendment of section 49 of Act 4 of 1998

22. Section 49 of the principal Act is hereby amended by the substitution for the expression “21 days”, wherever it occurs, of the expression “30 days”.

Amendment of section 52 of Act 4 of 1998

23. Section 52 of the principal Act is hereby amended by the insertion of the following subsection after subsection (2):

- “(2A) All permits and operating licences issued by the National Transport Commission, local road transportation boards and operating licensing boards in terms of the Road Transportation Act, 1977 (Act No. 74 of 1977), the National Land Transport Transition Act, 2000 (Act No. 22 of 2000), or provincial legislation contemplated in the definition of ‘replacing provincial law’ in section 1 of the lastmentioned Act, which authorise or purport to authorise cross-border road transport and with a validity period exceeding 12 months, lapse within six months after the entry into force of section 26 of the Cross-Border Road Transport Amendment Act, 2007: Provided that the holder of such a permit or operating licence may apply to the Regulatory Committee for the granting of a permit in terms of this Act.”.

Amendment of section 46 of Act 22 of 2000

24. Section 46 of the National Land Transport Transition Act, 2000, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) No one may set down passengers at or near an international border, where it is clear that such passengers intend to cross the border into another state, and no one may pick up passengers at or near such a border where it is clear that such passengers come from another state having crossed such border into the Republic, unless that person is the holder of the necessary permit required by the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998).”.

Amendment of section 127 of Act 22 of 2000

25. Section 127 of the National Land Transport Transition Act, 2000, is hereby amended by the substitution in subsection (1) for paragraph (p) of the following paragraph:

“(p) if the person sets down or picks up passengers at or near an international border in contravention of section 46(2);”.

Short title

26. This Act is called the Cross-Border Road Transport Amendment Act, 2007.

MEMORANDUM ON THE OBJECTS OF THE CROSS-BORDER ROAD TRANSPORT AMENDMENT BILL, 2007

1. BACKGROUND

The Bill seeks to amend the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998) (the Act). The Act established the Cross-Border Road Transport Agency and provides for the regulation of cross-border (i.e. international, road passenger and freight) transport. The Act has been in operation since 1 April 1998, and in the process of implementing it certain amendments to the Act have become necessary, as indicated below. Furthermore, international agreements to which the Act relates are constantly being entered into or amended, and the Bill seeks to bring the Act in line with the current agreements and current practice.

2. CLAUSE-BY-CLAUSE EXPLANATION

Clause 1 seeks to insert a Table of Contents.

Clause 2 will amend certain definitions, as follows:

The definition of “cabotage” is amended to make it clear that the term refers to both the on- and offloading of passengers and freight in the Republic by foreign carriers.

The definition of “cross-border road transport” is amended in the case of passengers to extend it to the transporting of their personal effects, and also to include the transporting of passengers in the course of an industry, trade or profession. This is to bring the definition in line with agreements concluded with the other states in the Southern African Development Community (SADC) (hereinafter called “the Agreements”).

The definition of “foreign carrier” is amended to include the undertaking of cabotage in the Republic.

The definition of “permit” is amended to increase the validity period of permits to a maximum of five years. This is to reduce the administrative burden of having to re-issue permits at short intervals.

The definition of “reward” is amended to provide that compensation paid for transport includes any type of reward, whether in cash or in kind.

The definition of “unauthorised transport” is amended to make it clearer.

The definition of “vehicle” is amended to replace the term “articulated vehicle” with “combination of vehicles” and to facilitate the practice that, in the case of cross-border road transport, a single permit is required for a combination of vehicles, while in the case of cabotage a separate permit is required for each vehicle component. See also the proposed amendments to sections 27 and 31.

Clause 3 seeks to amend section 4 of the Act in order to empower the Agency to levy and collect tolls on behalf of the South African National Roads Agency Ltd (SANRAL) as an authorised agent of SANRAL. This is to enable the Agency to fulfill its duty to harmonise taxes, fees and other charges between South Africa and countries with which it has cross-border transport agreements, in collaboration with SANRAL, to ensure uniform road user charges. If the Agency collects tolls at or near border posts on behalf of SANRAL, this will avoid the necessity for the latter to duplicate staff and infrastructure.

Clause 4 seeks to amend section 23 of the Act in order to make it clear that the Board also regulates cabotage.

Clause 5 seeks to amend section 25 of the Act in order to make it clear that no one may undertake cabotage unless he or she is the holder of a permit.

Clause 6 seeks to amend section 27 of the Act by removing the reference to transfers of permits. It has become clear, in the light of the validity periods of permits, that it makes no sense to have a transfer procedure when transferees may just as well apply for new permits. The clause also seeks to update the reference to road traffic legislation. It also seeks to insert additional factors for consideration by the Regulatory Committee when deciding whether or not to grant or refuse permits in respect of small business and persons previously disadvantaged by unfair discrimination. Applicants will also be required to submit tax clearance certificates. A subsection is added to make it clearer that a single permit must be issued for a combination of vehicles.

Clause 7 seeks to amend section 28 of the Act by removing the reference to transfers of permits and by applying to section 28 the new factors for consideration introduced in section 27. Paragraph (e) is amended to elucidate the factor relating to the ability of the applicant.

Clause 8 seeks to amend section 30 of the Act in order to provide that permits may be withdrawn or suspended, or other action taken already specified in the Act, also where the holder has not complied with the permit conditions or has ceased to operate the services in question.

Clause 9 seeks to amend section 31 of the Act in order to clarify the issue of cabotage and to provide that cabotage will not be allowed where it will be in conflict with transport plans prepared under the National Land Transport Transition Act, 2000 (Act No. 22 of 2000). It also seeks to provide that in the case of a combination of vehicles used for cabotage, the vehicle components may be registered in different countries. A separate permit is required for each component of the combination of vehicles in the case of cabotage.

Clause 10 seeks to amend of section 32 of the Act by removing the reference to transfers of permits. It also seeks to expand the power of the Regulatory Committee in order to delegate to the CEO the function of considering 14-day cabotage permits, where the applicant has an acceptable record and permits for a maximum of three months and where the application relates to the transporting of employees, workers, contractors or agents of the applicant being transported in the course of their employment.

Clause 11 seeks to amend section 33 of the Act by removing the reference to transfers of permits and by providing that it will no longer be compulsory for the Regulatory Committee to publish applications for renewal of permits, unless the renewal involves amendment of the conditions of the permit. It is also proposed that it will no longer be necessary to publish applications relating to passengers who are employees, agents, etc.

Clause 12 seeks to amend section 34 of the Act by removing the reference to transfers of permits.

Clause 13 seeks to amend section 35 of the Act in order to include provincial and local authorities in the list of stakeholders to be consulted in the process of the Board establishing consultative relationships.

Clause 14 seeks to amend section 37 of the Act by providing that the CEO rather than the Board will appoint road transport inspectors, as indicated above under clause 5.

Clause 15 seeks to amend section 38 of the Act in order to include cabotage and to bring it in line with the definition of “unauthorised transport”.

Clause 16 seeks to amend section 40 of the Act in order to include cabotage and to make it an offence to cede, alienate, hire out or hire a permit in contravention of the new proposed section 47(6).

Clause 17 seeks to amend section 41 of the Act in order to bring it in line with the definition of “unauthorised transport”.

Clause 18 seeks to amend section 44 of the Act in order to effect a consequential amendment.

Clause 19 seeks to amend section 45 of the Act in order to update the reference to road traffic legislation and to effect stylistic amendments.

Clause 20 seeks to insert a new section 46A in the Act in order to empower the Minister, after consulting the Regulatory Committee, the relevant member of the executive council of a province and the South African Police Service, to declare areas in which special measures can be imposed where he or she is of the opinion that this is necessary to normalise the situation in the area caused by violence, unrest or instability. The Minister may then make regulations which are valid for limited periods to suspend the operation of some or all of the permits authorising services in the area for a maximum of 21 days. Before making the regulations, the Minister must publish a notice in the *Government Gazette* and in a newspaper circulating in the area of the intention to make the regulations, and allow interested persons to comment.

Clause 21 seeks to amend section 47 of the Act in order to provide that holders of permits valid for more than one year must submit a roadworthy certificate and other requirements to the Regulatory Committee annually. It also seeks to provide that permits may not be ceded, alienated or hired out. The latter provision will bring the Act in line with legislation dealing with operating licences for domestic services.

Clause 22 seeks to amend section 49 of the Act in order to standardise the time limits.

Clause 23 seeks to amend section 52 of the Act in order to provide that all domestic permits and operating licences issued under the Road Transport Act, 1977 (Act No. 74 of 1977), the National Land Transport Transition Act, 2000, and provincial laws that authorise or purport to authorise cross-border transport, will lapse within six months after the new provision comes into operation. This is to assist with the process of converting permits to operating licences under the National Land Transport Transition Act, 2000, and to normalise the situation in relation to domestic permits purporting to authorise cross-border road transport.

Clause 24 seeks to amend section 46 of the National Land Transport Transition Act, 2000, which deals with cross-border road transport, in order to provide that passengers coming from other states may not be picked up near international borders in terms of domestic operating licences, as operators use this practice to evade the provisions of the Act.

Clause 25 seeks to effect a consequential amendment to section 127 of the National Land Transport Transition Act, 2000.

Clause 26 contains the short title of the Bill, which will come into operation as soon as it is promulgated in the *Government Gazette*.

3. CONSULTATION

A draft bill was published for comment in *Government Gazette* No. 21188 of 19 May 2000. A workshop to discuss the amendments was held with a wide range of stakeholders at Kyalami Exhibition Centre on 13 February 2002. Since then the Bill has been submitted to all the provinces for comment, and has been discussed individually with other stakeholders, such as operator associations.

4. FINANCIAL IMPLICATIONS

The Bill is not expected to have any financial implications, except that the cost in not publishing certain applications for renewal of permits will now be saved.

5. IMPLICATIONS FOR PROVINCES

None.

6. IMPLICATIONS FOR MUNICIPALITIES

None.

7. PARLIAMENTARY PROCEDURE

7.1 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 of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

7.2 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.