
GENERAL NOTICE

NOTICE 246 OF 2010

DEPARTMENT OF TRANSPORT

PUBLICATION FOR COMMENTS: TRANSPORT LAW ENFORCEMENT AND RELATED GENERAL MATTERS AMENDMENT BILL, 2010 (SECTION 75 Bill).

The above mentioned draft amendment Bill is hereby published for public comments.

Interested persons are invited to submit written comments on the Transport Law Enforcement and Related Matters Amendment Bill, 2010 (section 75 Bill) on or before the 15 April 2010. Submission or comments should be posted or emailed to the Director General, Department of Transport for the attention of ;

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REPUBLIC OF SOUTH AFRICA

TRANSPORT LAW ENFORCEMENT AND RELATED MATTERS GENERAL

AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. 33028 of 15 March 2010
(The English text is the official text of the Bill))

(MINISTER OF TRANSPORT)

[B - 2010]

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, to empower the Cross-Border Road Transport Agency to collect toll on behalf of the South African National Roads Agency Limited;**
 - **South African National Roads Agency Limited and National Roads Act, 1998, to provide more effectively for law enforcement relating to collection of tolls;**
- 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 levy and collect toll on behalf of the South African National Roads Agency Limited in terms of an agreement between itself and the last mentioned Agency concluded under section 28 of

the South African National Roads Agency and National Roads Act, 1998 (Act No. 7 of 1998)."

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—

(a) by the substitution for the definition of "municipality" of the following definition:

"(xii) 'municipality' [—

- (a) **until the legislation envisaged in section 155(2) of the Constitution takes effect, means any local government body vested with municipal legislative and executive jurisdiction (whether on an exclusive or a shared basis) in respect of a particular areas in terms of the Local Government Transition Act, 1993 (Act No. 209 of 1993), in compliance with section 155(1) of the Constitution;**
- (b) **as from the date when that legislation takes effect, means any municipality as contemplated in that legislation;]**

means a municipality as defined in section 2 of the Local Government:

Municipal Systems Act, 2000 (Act No. 32 of 2000);"; and

(b) by the insertion of the following definition after the definition of "national road":

"(xiiiA)'owner' in relation to a motor vehicle has the meaning ascribed it in the National Road Traffic Act, 1996 (Act No. 93 of 1996);".

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

"(b) for the driving or use of any vehicle on a toll road, may levy and collect a toll, the amount of which has been determined and made known in terms of subsection (3), which will be payable—

(i) at a toll plaza by the person so driving or using the vehicle; or

(ii) at any other place;

in the prescribed manner in cash or electronically or by another prescribed method and subject to the conditions

that the Agency may determine and so make known;"

(b) by the substitution for subsection (5) of the following subsection:

"(5) A toll road user—

(a) must register as a toll road user as prescribed;

(b) is liable for all tolls in connection with the use of a toll road;

(c) must pay the tolls at a toll plaza, or other place as contemplated in subsection (1)(b), when it becomes due and payable;

(d) is guilty of an offence and punishable upon conviction with imprisonment for a period not exceeding six months, or a fine as prescribed, or both the terms of imprisonment and the fine if the toll road user —

(i) fails or refuses to register as a toll road user as prescribed;

(ii) fails or refuses to pay any outstanding amount in respect of the use of toll roads that is due and payable;

(iii) fails or refuses to pay in the prescribed manner at the prescribed place, when using a toll road; or

(iv) owes money in terms of this Act which is due and payable and still uses a toll road.”;

(c) by the insertion after subsection (5) of the following subsection:

“(5A) For the purposes of subsection (5) of “toll road user” means any person driving, using or operating any vehicle on a toll road.”;

(d) by the substitution for subsection (6) of the following subsection:

“(6) Any national road or portion of a national road (including any bridge or tunnel thereon) which—

(a) under section 9 of the previous Act had been declared a toll road for the purposes of that Act and which immediately before the incorporation date exists and is operated as such under the previous Act[,] or

(b) is identified by the Minister by notice in the *Gazette*, specifying the prescribed particulars, as a road which is deemed to have been a toll road as at the incorporation date,

will be regarded and treated for all purposes as if it had been declared a toll road under subsection (1) of this section.”; and

(e) by the addition of the following subsections:

“(7) Where a road, portion of a road, bridge or tunnel has been declared a toll road under subsection (1), or is regarded as such in terms of subsection (6), the Minister may, despite the other provisions of this Act, authorise the Agency in writing to add new toll

plazas, or change the position of existing toll plazas, despite the fact that such toll plazas or their position was not shown as required by subsection (4)(a)(i) or by the equivalent provisions of the previous Act, provided that the Agency must—

- (a) give notice, generally, of the proposed new toll plaza or change in position of the existing toll plaza or plazas in the manner contemplated in subsection (4) (a); and
- (b) request the Premier and every municipality in whose area of jurisdiction the toll plaza or toll plazas will be situated to comment on the proposed new toll plaza or change in position of the existing toll plaza in the manner contemplated in subsection (4) (b), and the provisions of subsection (4) (c) and (d) will apply with the necessary changes and the Minister must be satisfied that the Agency has considered any comments and representations received before granting such authorisation.

(8) Where the Minister declares an existing road or part thereof as a national road under section 40, which prior to the date of such declaration had been declared as a toll road in terms of provincial legislation, such road or portion will be regarded and treated for all purposes as if it had been declared a toll road under subsection (1) of this section."

Amendment of section 54 of Act 7 of 1998

4. Section 54 of the South African National Roads Agency Limited and National Roads Act, 1998 is hereby amended—

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

“(2) Such an authorised employee **[will have the powers of arrest and detention conferred on]** may be declared as a peace officer in terms of section 334 [Chapter 5] of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)[, with regard to any person who, on a national road or the property mentioned in subsection (1), has committed any offence referred to in that subsection in the presence of the authorised employee or who is suspected by the authorised employee, on reasonable grounds, to have committed such an offence].”;

(b) by the insertion after subsection (2) of the following subsections:

“(2A) The Agency may appoint such an authorised employee as—

(a) a law enforcement officer, who has the powers of—

- (i) a traffic officer listed in section 3I of the National Road Traffic Act, 1996 (Act No. 93 of 1996), if he or she is in possession of a diploma referred to in section 3D of the same Act;
- (ii) an inspector contemplated in section 86 of the National Land Transport Act, 2009 (Act No. 5 of 2009); and

(iii) a national road transport inspector contemplated in section 37 of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998); or

(b) a toll road officer, who must have completed a training course as approved by the Chief Executive Office.

(2B) An authorised employee may, in addition to the powers conferred upon him or her in terms of this Act—

(a) question the driver of the vehicle as to whether the required toll has been paid, or as to whether that driver or the operator of that vehicle is registered as a toll road user as prescribed;

(b) require from the driver of the vehicle to furnish his or her full name, residential address and documentary proof thereof, as well as the name and address of the owner of the vehicle;

(c) direct the driver of the vehicle to display a special token, tag or other document or equipment as prescribed, or any permit, operating licence or other document required to be in or on the vehicle by law;

(d) confiscate or seize any such special token, tag, document or equipment that is suspected to be unauthorised; and

(e) question any person in relation to any such special token, tag, document or equipment.

(2C) Such an authorised employee must—

(a) issue a notice, as prescribed, if any special token, tag, document or equipment has been confiscated or seized under subsection (2B); and

(b) deliver such special token, tag, document or equipment which has been confiscated or seized under subsection (2B) to a police officer to be dealt with in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or to such other person as prescribed.

(2D) A driver of vehicle questioned or person required to give information in terms of powers conferred by subsection (2A) or (2B) is entitled to the same privileges as a witness testifying in a court of law.";

(c) by the addition in subsection (3) of the following paragraph:

"(c) the Road Traffic Management Corporation established by section 3 of the Road Traffic Management Corporation Act, 1999 (Act No. 20 of 1999), in terms of which that Corporation is authorised, and undertakes, to perform the law enforcement functions mentioned in subsections (1) and (2) on any national road by the employees of that Corporation designated or appointed by it for that purpose."; and

(d) by the addition of the following subsections:

"(4) The agreement contemplated in subsection (3) may provide for the—

- (a) compensation from the Agency in respect of law enforcement functions rendered by a province, municipality or the Road Traffic Management Corporation in terms of this Act; and
- (b) terms and conditions of such compensation.

(5) A traffic officer as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), a national road transport inspector as defined in section 1 of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998), and an inspector as defined in section 1 of the National Land Transport Act, 2009 (Act No. 5 of 2009), shall all have the following powers in addition to powers conferred on them by other laws:

- (a) to question the driver of a vehicle as to whether required tolls have been paid, or as to whether that driver or the operator of that vehicle is registered as the toll road user as prescribed;
- (b) to direct the driver of a vehicle to produce or display a special token, tag or other document or equipment as prescribed;
- (c) to confiscate or seize a special token, tag, document or equipment required by this Act that is suspected to be unauthorised; and
- (d) to question any person in relation to any such special token, tag, document or equipment.

(6) Such an officer or inspector must—

- (a) issue a notice, as prescribed, if any special token, tag, document or equipment has been confiscated under subsection (5); and
- (b) deliver such special token, tag, document or equipment which has been impounded under subsection (5) to a police officer to be dealt with in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or to the Agency as prescribed.

(7) A person questioned or required to give information under subsection (5) is entitled to the same privileges as a witness testifying in a court of law.

(8) Where an authorised employee or a traffic officer or inspector contemplated in subsection (5) reasonably suspects that there are outstanding toll or other surcharges, fees, fines or penalties payable in respect of this Act in respect of any vehicle, or that the person responsible to pay toll in respect of the vehicle is not registered as required by section 27(5)(a) and relevant regulations, he or she may prohibit or prevent the use of that vehicle on any toll road until—

(a) all outstanding toll and other amounts payable in terms of this

Act in respect of the vehicle have been paid; or

(b) that person has signed an admission of guilt and

acknowledgement of debt in respect thereof or has made other acceptable arrangements to pay those tolls and amounts as prescribed; or

(c) if the person disputes such toll or amounts, the authorised employee, officer or inspector has issued to the person a notice contemplated in section 56 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or an infringement notice contemplated in section 17 of the Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998); and

(d) such person has been registered as required by this Act."

Amendment of section 58 of Act 7 of 1998

5. 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:

“(1) The Minister, after consultation with the Agency, may by notice in the *Gazette* make regulations that are not inconsistent with this Act—;

(b) by the insertion in subsection (1) after paragraph (d) of the following paragraphs:

“(dA) providing for the pre-payment of toll, or payment of toll on account or in installments and the registration of persons liable to pay toll including, but not limited to—

- (i) the method and procedures for paying toll on account, in installments or otherwise, and providing for interest to be charged on overdue amounts;
- (ii) the information to be supplied by persons liable to pay toll;
- (iii) matters necessary to facilitate the incorporation of offences under this Act into the enforcement system created by the Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998);
- (iv) the exemption of certain categories of road users from having to register, or having to do so in respect of certain vehicles or categories of vehicles; and

(v) the provision that registration as a toll road user may be delayed in certain areas or in respect of certain toll roads, or in respect of categories of road users, vehicles or categories of vehicles;

(dB) providing specifications for the use of tolling equipment, the identification of vehicles on toll roads by means of tolling equipment and the maintenance and verification of tolling equipment;

(c) by the insertion of the following subsection after subsection (1)”

“(1A) The regulations contemplated in subsection (1) (dA) and (dB) may provide for the issuing of directions, conditions or requirements with regard to those regulations. “; and

(d) by the addition after subsection (3) of the following subsection:

“(4) Before the Minister makes any regulation, the Minister may, if he or she deems it expedient, cause a draft of the proposed regulation to be published in the Gazette together with a notice calling upon all interested persons to lodge in writing and within a period specified in the notice, but not less than four weeks as from the date of publication of the notice, any objections or representations which they would like to raise or make with the Director-General for submission to the Minister: Provided that, if the Minister thereafter decides to alter the draft regulation as a result of any objections or representations submitted, it shall not be necessary to publish such alterations before making the regulation.”

Insertion of sections 59A and 59B in Act 7 of 1998

6. The following sections are hereby inserted in the South African National Roads Agency Limited and National Roads Act, 1998, after section 59:

"Presumptions

59A. (1) Where in 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, it is necessary to prove who was the driver or operator of such vehicle or the user of the road in question or of such vehicle it shall be presumed, in the absence of evidence to the contrary, that such vehicle was driven or operated by the owner.

(2) For the purposes of subsection (1) it shall be presumed in the absence of evidence to the contrary that, where the owner of the vehicle concerned is a corporate body, such vehicle was driven, operated or used as contemplated in that subsection, by a director or employee of the corporate body in the exercise of his or her powers in the carrying out of his or her duties to further the interests of the corporate body.

(3) In a prosecution for an alleged contravention of this Act, where electronic evidence to prove such contravention is produced, such electronic evidence upon its production, shall be presumed to be prima facie proof of the contravention in the absence of evidence to the contrary.

(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.

Service of documents

59B. (1) Any document required to be served on a person in terms of this Act, must be served on that person personally or sent by registered post to his or her last known address as provided in subsection (3).

(2) A document served on the driver or person in control of a motor vehicle at any place is regarded as proper service on the person liable to pay toll in respect of that vehicle in terms of section 27(5)(b).

(3) A document sent by registered post in terms of subsection (1) is regarded as having been received by the person to whom it was sent ten days after it was posted, unless evidence to the contrary is adduced, which may be in the form of an affidavit.

(4) The address referred to in subsection (1) shall be the address of the person liable to pay toll—

(a) supplied by that person upon registration in terms of section 27(5); or

(b) where such address has not been supplied or is suspected to be incorrect or not to be current, the person's last address recorded on the National Traffic Information System as contemplated in the National Road Traffic Act, 1996 (Act No. 93 of 1996); or

(c) such other address as may be prescribed."

Amendment of section 60 of Act 7 of 1998

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

(a) by substituting the heading for the following:

“Amendment, exclusion and repeal of laws”

(b) by the addition of the following subsection:

“(3) Despite the provisions of the National Credit Act, 2005 (Act No. 34 of 2005), those provisions are not applicable to the levying and collecting of toll in terms of this Act.”

Amendment of Contents of Act 7 of 1998

8. 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

59B. Service of documents”.

Short title and commencement

9. This Act is called the Transport Law Enforcement and Related Matters Amendment Act, 2010, and takes effect on a date fixed by the President by proclamation in the *Gazette*.
