



Wes-Kaapse Provinsiale Parlement
 Western Cape Provincial Parliament
 IPalamente yePhondo leNtshona Koloni

COMMITTEE REPORT

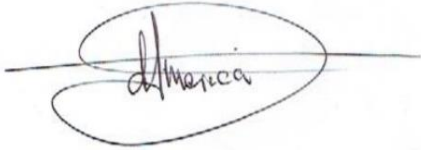
(Negotiating mandate stage) Report of the Standing Committee on Mobility on the National Land Transport Amendment Bill [B 7F-2016], dated 23 August 2023, as follows:

The Standing Committee on Mobility, having considered the subject of the National Land Transport Amendment Bill [B 7F-2016] referred to the Committee in accordance with Standing Rule 217, confers on the Western Cape’s delegation in the NCOP the authority to support the Bill subject to the following amendments.

Clause	Comment	Recommendation
Additional comment – section 11(1)(b)	Section 11(1)(b) of the National Land Transport Act, 2009 (Act 5 of 2009) (the Act), provides for the responsibilities of the provincial sphere of government. It is submitted that it should be specified that the provincial sphere of government is able to plan, implement and manage provincial land transport initiatives, including public transport services. This would include provincial public transport services operating within the borders of the province but across the boundaries of multiple municipalities.	It is recommended that the section be revised to include these recommendations.
Additional comment – section 11(1)(b)	<p>Pursuant to the President’s concerns about the constitutionality of a province unilaterally concluding contracts with operators for services provided in the province where the municipality did not meet requirements or criteria prescribed by the Minister, these provisions (clause 7(b) in the previous draft of the Bill [B7B—2016]) were removed from the Bill. This in effect means that the local sphere of government is responsible for entering into contracts with operators of services in their areas as contemplated in subsection (1)(c)(xxvi) of the Act. This is consistent with the Constitution of the Republic of South Africa, 1996, (the Constitution) where municipal public transport is listed in Schedule 4 Part B as being a local government matter.</p> <p>However, it must be noted that section 12(1) of the Act states that a province may enter into an agreement with one or more municipalities in the province to provide for the joint exercise or performance of their respective powers and functions contemplated in the Act.</p> <p>Furthermore, section 11(1)(b)(v) of the Act provides that</p>	<p>It is submitted that a province should be able to enter into public transport contracts in specific circumstances when requested to do so by a municipality and subject to a section 12(1) agreement with the municipality.</p> <p>Such contracts could be utilised when contracted public transport services operate across municipal borders. It is currently not clear how municipalities will negotiate and conclude contracts where the operators for services provide these services within a province but across borders between municipalities. It is submitted that clarity is required as to who would undertake the negotiation and conclusion of the contracts with these operators.</p>

	<p>a province may assist a municipality that lacks capacity and resources to perform their land transport functions. This is consistent with section 155(6)(a) of the Constitution which states that a provincial government must provide for the support of local government in the province.</p>	
Clause 7(a)	<p>The proposed amendment to section 11(1)(c)(v) includes a reference to “state-owned rail operators”.</p>	<p>It is submitted that a definition for this term should be inserted in section 1 of the Act.</p>
Clause 7(c)	<p>The proposed amendment to section 11(1)(c) (xix) uses the term “other rail service providers” but does not define this term and does not clarify whether this is a reference to private or state-owned service providers or both.</p> <p>Furthermore, requiring “agreement” from the Passenger Rail Agency or other rail service providers in relation to the provision of service level planning for passenger rail on a corridor network basis could delay or hinder the completion of the relevant integrated transport plan if such agreement is not forthcoming or delayed. It is submitted that “consultation” is a lesser and more realistic standard to achieve. Furthermore, municipal planning is a functional area in terms of Part B of Schedule 4 of the Constitution and one which a municipality has executive authority in respect of and has the right to administer in terms of section 156(1) of the Constitution. Requiring “consultation” would be in accordance with these rights.</p>	<p>It is submitted that a definition for “other rail service providers” should be inserted in section 1 of the Act.</p> <p>It is submitted that “consultation” should replace “agreement” in the proposed amendments of this subparagraph.</p>
Clause 7(g)	<p>Regarding the insertion of proposed subsection (10)(a), it is submitted that the inclusion of a prescribed process or procedures to be followed in the negotiation or tendering of contracts contemplated in proposed subsections (1)(c)(xxvi) and (8) is problematic. A municipality has executive authority in respect of and has the right to administer those local government matters listed in Part B of Schedule 4 of the Constitution, including municipal public transport, and in terms of any other matter assigned to it by national or provincial legislation as contemplated in section 156(1)(b) of the Constitution. Proposed subsection (10)(a) empowers the Minister to make regulations about the process or procedures to be followed in negotiating or tendering for contracts. It is submitted that this does not accord with the right of municipalities to administer municipal public transport. Furthermore, the inclusion of a provision that does not permit municipalities to negotiate and conclude a contract in a manner that considers the specific circumstances of the transaction and the parties involved is problematic and potentially hampers the conclusion of such contracts. Contractual flexibility will enable the parties to negotiate terms that are best suited to them.</p>	<p>In the previous draft of the Bill [B7B—2016] a proposed provision in clause 7(n) inserted subsection (9)(d) in section 11 which empowered the Minister to prescribe requirements and criteria with which municipalities must comply in order to conclude contracts. This was deleted after the President raised concerns about the constitutionality thereof in that national and provincial governments are not generally permitted, through legislation, to assume local government functions for themselves. In a similar vein it is submitted that proposed section 11(10)(a) inserted by clause 7(g) should be deleted. Not only does it encroach on the functions of the municipality, but the deletion thereof will enable municipalities to manage the negotiation and tendering for contracts in a manner that considers the specific circumstances of the matter and that will be advantageous to them.</p> <p>Section 11(1)(b)(v) of the Act states that the</p>

		provincial sphere of government is responsible for ensuring that municipalities that lack capacity and resources are capacitated to perform their land transport functions. Consequently, it is submitted that a province can assist a municipality that requires assistance to negotiate and conclude contracts.
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MR D AMERICA, MPP
CHAIRPERSON: STANDING COMMITTEE ON MOBILITY
23 AUGUST 2023