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GAUTENG***



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PREMIER'S NOTICES • PREMIERSKENNISGEWINGS

PREMIER'S NOTICE 4 OF 2017

OFFICE OF THE PREMIER

It is hereby notified that the Premier has assented to the following Act that is hereby published for general information:

No. 2 of 2017: Gautrain Management Agency Amendment Act, 2017

GAUTENG PROVINCIAL LEGISLATURE

**GAUTRAIN MANAGEMENT
AGENCY AMENDMENT ACT**

ENGLISH TEXT SIGNED BY THE PREMIER

ASSENTED TO ON: 31/10/2017

CERTIFIED CORRECT AS PASSED BY
THE GAUTENG PROVINCIAL LEGISLATURE

SIGNED *Althea*
SPEAKER

DATE 19/10/2017



No 2, 2017

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.

ACT

To amend the Gautrain Management Agency Act, 2006, so as to substitute certain definitions; to amend the objects of the Agency; to extend the scope of projects that the Agency may undertake; to amend the functions of the Agency; to provide for limitation of liability; to provide for consequential amendments, and to provide for matters connected therewith.

B IT ENACTED by the Gauteng Provincial Legislature as follows:—

Amendment of section 1 of Act 5 of 2006

1. Section 1 of the Gautrain Management Agency Act, 2006 (Act No. 5 of 2006) (hereafter referred to as “the Principal Act”) is hereby amended— 5

- (a) by the substitution for the definition of “Companies Act” of the following definition:

“‘**Companies Act**’ means the Companies Act, [1971 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008);”;
- (b) by the substitution for the definition of “concession agreement” of the following definition: 10

“‘**concession agreement**’ means a written agreement concluded between the Province and a concessionaire for any aspect of the planning, design, construction, operation, maintenance, financing or partial financing of [the Gautrain Rapid Rail Link Project] a 15 project;”;
- (c) by the substitution for the definition of “Department” of the following definition:

“‘**Department**’ means the [Gauteng Department of Public Transport Roads and Works or its successor] department responsible for roads 20 and transport matters in the Province;”;
- (d) by the insertion after the definition of “Department” of the following definition:

“‘**GTIA**’ means the Gauteng Transport Infrastructure Act, 2001 (Act No. 8 of 2001);”;
- (e) by the insertion after the definition of “Metropolitan municipalities” of the following definition: 25

“‘**organ of state**’ means an organ of state as defined in section 239 of the Constitution;”;

- (f) by the substitution for the definition of "Project" of the following definition:
 " **'project'** means **[the Gautrain Rapid Rail Link Project]** a project for the planning, design, construction, financing, operation and maintenance of [the rapid] any part or aspect of the rail transit system or other functions related to rail in the Province, or a feeder and distribution service connected therewith [to be developed and operated pursuant to a concession agreement];"; 5
- (g) by the insertion after the definition of "Province" of the following definition:
 " **'Provincial Treasury'** means the Gauteng Provincial Treasury established in terms of section 17(1) of the PFMA;"; and 10
- (h) by the substitution for the definition of "this Act" of the following definition:
 " **'this Act'** includes any regulations **[and any directions]** made under section **[8] 41.**"

Amendment of section 4 of Act 5 of 2006

2. Section 4 of the Principal Act is hereby amended— 15
- (a) by the insertion after paragraph (a) of the following paragraph:
 "(aA) assist the MEC, where the MEC has so requested, in performing public transport and rail-related functions and exercising public transport and rail-related powers contemplated in section 50 of the GTIA, subject to section 56 of the GTIA;"; 20
- (b) by the substitution of paragraph (d) of the following paragraph:
 "(d) manage the finances of the Project and manage the financial securities provided by concessionaires;";
- (c) by the insertion after paragraph (d) of the following paragraph:
 "(dA) In consultation with the MEC, assist or act on behalf of any organ of state, when so requested, in realising its integrated public transport and rail-related objectives and in protecting its interests and managing the assets, finance and financial securities of such organ of state;"; and 25
- (d) by the substitution for paragraph (i) of the following paragraph: 30
 "(i) enhance the integration of **[the Project]** rail services in the Province with other transport services and integrated Public Transport Plans."

Amendment of section 5 of Act 5 of 2006

3. Section 5 of the Principal Act is hereby amended— 35
- (a) by the substitution for paragraph (a) of the following paragraph:
 "(a) carry out **[the duties assigned to it by]** its functions in terms of this Act, **[the National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002) or]** and any other applicable **[applicable]** law;";
- (b) by the substitution for paragraph (d) of the following paragraph: 40
 "(d) act as an agent of the MEC under section 56(2) of the **[Gauteng Transport Infrastructure Act, 2001 (Act No. 8 of 2001)]** GTIA in relation to **[protection of the rail reserve and other Provincial transport infrastructure involved in the Project]** the integrated public transport and rail-related functions of the MEC contemplated in section 50 of the GTIA and in the National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002);"; 45
- (c) by the insertion after paragraph (f) of the following paragraph:
 "(fA) after the MEC's consultation with the Minister responsible for transport in the national sphere of government in order to promote integration and co-ordination of transport, plan and manage the determination of routes for provincial railway lines in terms of section 6 of the GTIA and manage the determination of preliminary designs for provincial railway lines in terms of section 8 of the GTIA;"; and 50
- (d) by the substitution for paragraph (g) of the following paragraph: 55
 "(g) exercise or perform any other integrated public transport and [function related to transport service] rail-related duty, right or

power of the MEC provided for in section 50 of the GTIA that may be ~~assigned~~ delegated to the Agency by the MEC from time to time;”.

Amendment of section 13 of Act 5 of 2006

4. Section 13 of the Principal Act is hereby amended by the substitution of subsection (3) of the following subsection: 5
- “(3) Subject to section 11, any person whose term of office as a member has expired is eligible for reappointment provided that such member may not serve for more than two consecutive terms.”.

Amendment of section 19 of Act 5 of 2006

5. Section 19 of the Principal Act is hereby amended by the substitution for paragraph (a) of subsection (3) of the following paragraph: 10
- “(a) consist of at least ~~one member~~ three members and such other persons, as the Board may appoint;”.

Amendment of section 20 of Act 5 of 2006

6. Section 20 of the Principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 15
- “(3) The Board must summarise the Charter in the annual report and review it at least ~~every three years~~ annually.”.

Amendment of section 28 of Act 5 of 2006

7. Section 28 of the Principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 20
- “(1) The Chief Executive Officer must disclose to the Board any direct or indirect interest, including a potential interest, which he or she or an immediate family member, business partner, associate or previous employer has in any business that may benefit from any project or from the Agency.” 25

Amendment of section 34 of Act 5 of 2006

8. Section 34 of the principal Act is hereby amended—
- (a) by the substitution for paragraphs (i) and (j) of subsection (2) of the following paragraphs respectively: 30
- “(i) a human resources plan; and
- (j) a plan for enhancing the integration of the Project with other transport services, including public road and rail transport and private transport, within the framework of the Province’s Provincial Land Transport Framework contemplated in section ~~[22]~~ 35 of the National Land Transport ~~[Transition]~~ Act, ~~[2000 (Act No. 22 of 2000)]~~ 2009 (Act No. 5 of 2009), and the municipal integrated transport plans in the Province contemplated in section ~~[27]~~ 36 of that Act ~~[; and]~~.”; and 35
- (b) by the substitution for subsection (4) of the following subsection: 40
- “(4) The Board must consider any comments, ~~[or]~~ proposals or suggestions made by the MEC, and must implement any changes or additions requested by the MEC.”.

Amendment of section 38 of Act 5 of 2006

9. Section 38 of the Principal Act is hereby amended— 45
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) The Agency must keep ~~[such accounting and related records]~~ full and proper books and records of its financial affairs and of all projects according to Generally Recognised Accounting Practice, and in the format prescribed in terms of the ~~[Public Finance Management Act]~~ PFMA.”; 50

- (b) by the substitution for subsection (2) of the following subsection:
 “(2) Such books and records must distinguish between the funds required for Agency operation and funds required for **[the Project]** each project.”;
- (c) by the substitution for subsection (3) of the following subsection: 5
 “(3) The **[accounting and related]** books and records of the Agency must be **[audited annually by]** submitted to the Auditor-General within two months of the end of the financial year [and financial statements must be submitted to the Provincial Treasury and Auditor-General within five months of the financial year end] to enable the Auditor-General to audit them.”; and 10
- (d) by the insertion after subsection (3) of the following subsection:
 “(3A) The audited financial statements must be submitted to the Provincial Treasury and the MEC within five months of the end of the financial year.”. 15

Insertion of sections 41A and 41B in Act 5 of 2006

10. The following section is hereby inserted in the Principal Act after section 41:

“Limitation of liability

41A. The Province, the Agency and their officials, employees or agents, and any other person acting on their behalf, shall not be liable for any loss or damage suffered by any person as a result of the exercise of any power or the performance of any duty in terms of this Act in good faith, or the failure to exercise any such power or to perform any such duty in good faith. 20

41B. The limitation of liability provided for in section 41A does not include any fraudulent or unlawful acts, prohibited by any law.”. 25

Substitution of words or expressions in Act 5 of 2006

11. The Principal Act is hereby amended—

- (a) by the substitution for the word “Project” wherever it occurs of the word “project”; and 30
- (b) by the substitution for the expression “Gauteng Transport Infrastructure Act, 2001 (Act No. 8 of 2001)” wherever it occurs of the expression “GTIA”.

Amendment of law

12. The Gauteng Transport Infrastructure Act, 2001 (Act No. 8 of 2001) is hereby amended to the extent mentioned in column 2 of the Schedule. 35

Substitution of long title of Act 5 of 2006

13. The following long title is hereby substituted for the long title of the Principal Act:
 “To provide for the establishment of a Gautrain Management Agency as a provincial public entity to manage and oversee concession agreements for the **[Gautrain Rapid Rail Link Project]** Gauteng rail transit system and assist the Province and other Organs of State in realising their integrated public transport and rail-related objectives in the Province, to determine [its] the Agency’s objectives, powers and duties; to provide for directives or delegations by the MEC; to provide for a Board to govern and control the Agency; to provide for the appointment of a Chief Executive Officer and staff to manage the Agency; to provide for the transfer of staff and assets to the Agency; to provide measures for accountability and reporting; to provide for liquidation and [judicial management] business rescue; to provide for delegations by the MEC, Board and the chief executive officer; to provide for transitional provisions; and to provide for matters connected therewith.” 40
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Short title and commencement

14. This Act is called the Gautrain Management Agency Amendment Act, 2017.

SCHEDULE

Amendment of law (section 12)		5
Column 1	Column 2	
Act No. 8 of 2001	Section 56 of the Gauteng Transport Infrastructure Act, 2001 (Act No. 8 of 2001) is hereby amended by the insertion after subsection (1) of the following subsection: “(1A) Subject to subsection (3), the MEC may delegate any integrated public transport and rail-related duty, right or power given by this Act to the Gautrain Management Agency, established by section 2 of the Gautrain Management Agency Act, 2006 (Act No. 5 of 2006), subject to conditions determined by the MEC that apply to such delegation, and the MEC will not thereby be divested of such a delegated duty, right or power.”.	10 15 20 25

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