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GENERAL NOTICE

Transport, Department of

General Notice

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GENERAL NOTICE

NOTICE 1297 OF 2006

DEPARTMENT OF TRANSPORT

PUBLICATION FOR PUBLIC COMMENTS: CROSS BORDER ROAD TRANSPORT AMENDMENT BILL, 2006

The above-mentioned draft Bill is hereby published for public comments. Interested persons are invited to submit written comments on the draft Bill by no later than 05 October 2006. Submission should be posted to the Director-General for the attention of Adv. AM Masombuka and Mr. Marius Luyt at.

The Department of Transport
Private Bag x 193
PRETORIA
0001

REPUBLIC OF SOUTH AFRICA

CROSS-BORDER ROAD TRANSPORT AMENDMENT BILL

*(As introduced in the National Assembly as a section 75-Bill; explanatory summary of Bill published in
Government Gazette No. of) (The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

[B - 2006]

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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 No. 4 of 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 simplify the procedures for appointment of Board members; to amend the appointment procedures of certain staff members of the Board; 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; to create certain offences; to amend certain provisions of the National Land Transport Transition Act No. 22 of 2000; and to provide for matters connected thereto.

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

Insertion of Table of Contents

1. The following Table of Contents is hereby inserted in the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998) (hereinafter referred to as the principal Act) before Part 1:

"TABLE OF CONTENTS

PART 1

Definitions

1. Definitions

PART 2

Road transport agreements with other states

2. Authorisation to conclude road transport agreements
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PART 3

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6. Disqualifications
7. Period of office of Chairperson, Deputy Chairperson and other members

8. Chairperson and Deputy Chairperson
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11. Vacation of, and removal from, office
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13. Regulatory Committee
14. Staff of Agency
15. Appointment of experts
16. Meetings and decisions
17. Procedures
18. Financing of Agency
19. Bookkeeping and auditing
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PART 4

Scope and functions of Board

23. Functions of Board

PART 5

Advisory functions of Board

24. Advisory functions

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Regulatory functions of Board

25. Permit application
26. Temporary permits
27. Freight transport
28. Passenger transport
29. Temporary replacement of vehicle
30. Withdrawal, suspension or variation of permit
31. Cabotage
32. Delegation of powers
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PART 7

Facilitatory functions of Board

35. Facilitatory functions
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PART 8

Law enforcement

37. Road Transport Inspectorate
38. Powers of national road transport inspector
39. Functions of road transport inspectors
40. Offences and penalties

41. Forfeiture
42. Evidential matters
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44. Limitation of liability
45. Points demerit system
46. Co-operation between Board and cross-border road transport industry
- 46A. Special emergency measures

PART 9

Duties of permit-holder

47. General duties
48. Discontinuation of cross-border passenger road transport
49. Return of consignment notes and passenger lists

PART 10

Procedural matters

50. Minute keeping by Board and Regulatory Committee
51. Regulations
52. Transitional provisions
53. Partial repeal of Act 74 of 1977, and savings
54. Short title and commencement

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:

"(a) the unloading [**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:

" '**cross-border road transport**' means the transport of passengers and their personal effects or freight for reward [**or the transport of freight**] or 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:

" '**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 the definition of "**permit**" of the following definition:

" '**permit**' means—

- (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;
- (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
- (c) a temporary cross-border road transport permit or cabotage permit issued in respect of a vehicle for a maximum period of 14 days authorising the transport of freight or passengers on specified routes or cabotage, as the case may be;"
- (e) by the substitution for the definition of "**reward**" of the following definition:
- " '**reward**' means any reward or compensation whether monetary or otherwise or 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:
- " '**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";
- (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 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:

"(3) The Agency may levy and collect toll on behalf of the South African National Roads Agency Limited as contemplated in section 28

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

Amendment of section 5 of Act 4 of 1998

4. Section 5 of the principal Act is hereby amended—

(a) by the substitution for subparagraph (iii) of paragraph (c) of subsection (2) of the following subparagraph:

"(iii) four are persons **[selected]** appointed by the Minister. **[from a list of names of persons which, at the Minister's request by notice in the media, have been submitted to him or her within the period specified in the notice by any association, institution, organisation or individual with an interest in the cross-border road transport industry, the labour and consumer sector]**";

(b) by the deletion of subsection (3).

Amendment of section 13 of Act 4 of 1998

5. Section 13 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

"(c) the Chief Executive Officer referred to in section 14. **[(1)(a)]**".

Substitution of section 14 of Act 4 of 1998

6. The following section is hereby substituted for section 14 of the principal Act:

"Staff of Agency

14. (1) The day-to-day business and operations of the Agency shall be under the control of the Chief Executive Officer appointed by the Minister after consultation with the Board.

(2) The Chief Executive Officer must, subject to the approval of the Board, appoint personnel to provide the required administrative, secretarial, research and technical assistance to the Agency, Board and Regulatory Committee.

(3) The Board must determine the remuneration packages and employment benefits for persons employed by the Agency, with the approval of the Minister in consultation with the Minister of Finance."

Amendment of section 23 of Act 4 of 1998

7. 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

8. 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

9. Section 27 of the principal Act is hereby amended—

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

"(1) 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 for paragraph (a) of subsection (1) 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 of the word "and" at the end of paragraph (e) in subsection (1), 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 addition 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; and

(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 after subsection (2):

"(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

10. Section 28 of the principal Act is hereby amended—

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

"(1) 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 for paragraph (a) of subsection (1) of the following paragraph:

"(a) the considerations referred to in section 27(1)(a), (b), (d), **[and]** (e), (eA), (eB) and subsection (1A);"

(c) by the substitution for paragraph (e) of subsection (1) 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

11. 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 after subsection (6):

"(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."

Amendment of section 31 of Act 4 of 1998

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

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

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

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

“(b) it is satisfied that—

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

(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.”;

(c) by the substitution for subsection (3) thereof 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.”.

Amendment of section 32 of Act 4 of 1998

13. Section 32 of the principal Act is hereby amended by—

(a) the substitution for the introductory portion of paragraph (a) thereof of the following:

- “(a) consider applications, in accordance with the prescribed procedure, for the granting, renewal[, **transfer**] or amendment of—”;
- (b) the deletion of the word "and" after subparagraph (ii) of paragraph (a);
- (c) the insertion of the following subparagraphs after subparagraph (ii) of paragraph (a):
- “(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”.

Amendment of section 33 of Act 4 of 1998

- 14.** 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 subject to the provisions of subsections (1A) and (2).";

(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 amended by section 1 of Act 70 of 1998

15. The introductory portion of section 34 of the principal Act is hereby amended as follows:

"Appeals

34. 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

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

- (a) by the deletion of the word "and" at the end of paragraph (i) of subsection (1);
- (b) by the substitution for paragraph (j) of subsection (1) of the following paragraph:

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

- (c) by the addition of the following paragraph after paragraph (j) of subsection (1):

"(k) any other designated stakeholder.".

Amendment of section 37 of Act 4 of 1998

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

"(1) The **[Board]** Chief Executive Officer must appoint the national Road Transport Inspectorate, consisting of the national road transport inspectors, to whom the provisions of section 14(3) apply.".

Amendment of section 38 of Act 4 of 1998

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

(a) by the substitution for paragraph (e) of subsection (1) 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;”;

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

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

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

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

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

"(zA) **[contravenes or fails to comply with any provision of this Act, if such contravention or failure is not elsewhere decared an offence,]** cedes, alienates, hires out or hires a permit in contravention of section 47(7) after that subsection comes into operation;";

(c) by the addition of the following paragraph in subsection (1) after paragraph (zA):

"(zB) contravenes or fails to comply with any provision of this Act, if such contravention or failure is not elsewhere decared an offence.";

(d) by the addition of the following subsection after subsection (1):

"(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."

Amendment of section 41 of Act 4 of 1998

20. Section 41 of the principal Act is hereby amended by the substitution for the phrase "unauthorised road transport" wherever it occurs in subsection (1) of the phrase "unauthorised transport".

Amendment of section 44 of Act 4 of 1998

21. 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.”.

Amendment of section 45 of Act 4 of 1998

22. 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, and may devise penalties, as may be prescribed.”.

Insertion of section 46A in Act 4 of 1998

23. 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.

(2) The Minister may make regulations providing that the operation of any specified permit is, or all permits are, temporarily suspended insofar 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.

(3) Regulations under subsection (2) may provide that the contravention thereof will constitute an offence and 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 in Act 4 of 1998

24. 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

25. Section 49 of the principal Act is hereby amended by the substitution for the phrase "21 days" whenever it occurs of the phrase "30 days".

Amendment of section 52 of Act 4 of 1998

26. 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, will lapse within six months after the entry into force of this subsection: 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

27. Section 46 of the National Land Transport Transition Act, 2000 (Act No. 22 of 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

28. Section 127 of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000) is hereby amended by the substitution for paragraph (p) of subsection (1) 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

29. This Act is called the Cross-Border Road Transport Amendment Act,
2006.
