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TRANSPORT
FOR CAPE TOWN

T(B7/16
No: 2

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3 June 2016

Portfolio Committee on Transport
3rdf Floor, W/S 3/79, 90 Plein Street
8001 CAPE TOWN

Attention: Valerie Carelse
vcarelse@parliament.gov.za

Dear Madam

COMMENTS ON THE NATIONAL LAND TRANSPORT AMENDMENT BILL

1. Reference is made to the IPTN definition amendment. It is agreed to, except for the words, [if road based] when referring to dedicated rights of way. It should not just be road based but also rail. The definition should be amended to make it clear that the IPTN includes road and rail.

2. There is full agreement with the insertion of the definition of Municipal Regulatory Entity.

3. The definition of 'non-motorised transport' should state ...... and <u>both non-motorised</u> and motorised wheelchairs <u>and/or other similar modes</u>.

4. Section 8(1)(h) amendment: The Act should also make it clear that Municipalities can also have their own branding as it relates to their public transport system, as is the case at the moment.

5. Section 11(1)(a)xi) – reference is made to Section 41A but there is no Section 41A in the principal Act – it needs to say [the new Section 41A].

6. Section 11(6) – <u>This proposed amendment is NOT agreed to</u> – the statement (unless that function is assigned to a Municipality by the Minister) cannot be deleted but rather after Minister the words [and/or] can be added. This deletion contradicts Section 11(4) as well as the new 11(8) et al.

7. Section 11 (10) (d) (ii): It would be useful if more clarity as to what is expected by Municipalities in relation to "necessary capacity". It is recommended that Chapter 6 of the CITP's of each Municipality should elaborate on their capacity.

8. There is agreement to the proposed amendments to Section 15 of the principal Act.

9. There is agreement to the proposed amendment to Section 17 of the principal Act.

10. Section 18(1) – The amendments proposed are NOT agreed to. The amendment should rather state: "A Municipal Regulatory Entity must receive and decide on applications relating to operating licences for services wholly within or emanating from the area of jurisdiction of the Municipality concerned so long as it does not go outside the boundaries of the Province. Further the word intraprovincial should be changed to interprovincial services where the services cross the boundaries of the Province. This also relates to Section 24(1)(b). It is also recommended that this also relates to Charter Services (Section 67).

11. Section 20 prescribes the National Public Transport Regulator function and Sections 23 & 24 prescribe the Provincial Regulatory Entity BUT there are no clauses that prescribe the Municipal Regulatory Entity.

12. There is agreement to the proposed amendment to Section 27 of the principal Act.

13. There is agreement to the proposed amendments to Section 36 of the principal Act.

14. Section 39(3): the planning authority cannot take steps to cancel operating licences and permits – it should rather state that, upon recommendation/request of the planning authority, the regulatory entity shall take steps/measures to cancel ....

15. There is agreement with the proposed new Section 41A – stopgap Contracts.

16. The proposed amendments to Section 46 are agreed to.

17. The amendments proposed in Section 47 have the following implications:

    - The principal Act said 7 (seven) years from the commencement of that Act which is 2016 – the current year.

    - If this amendment goes through it will mean that this time period if moved from 2016 – 5 (five) years on to 2020.

    - This will have serious financial and operating consequences.

- It is rather recommended to change it to 2 (two) years, unless already concluded.

18. There is agreement with the proposed amendments of Section 51 and 53 of the principal Act.

19. Section 54(2): after the word "wholly within the area of jurisdiction" add the words or emanating from the area but within the boundaries of the Province in which the Municipalaity is situated.

20. Section 62: The deletion of paragraph (f) of Section 62(1) is questioned – if there is no proof of insurance cover there will be a potential increase in liabilities and safety risks. This deletion is not agreed to.

21. Section 66 proposed amendments and additions are agreed to.

22. There is agreement to the proposed amendments to Section 86 of the principal Act.

Melissa Whitehead
Commissioner : Transport for Cape Town

B7/16
No:3

UBER

Uber South Africa Technology (Pty) Ltd
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Dear Ms DP Magadzi MP
Chairperson of the Portfolio Committee on Transport

Uber B.V. ("**Uber**") welcomes this opportunity to make these submissions on the National Land Transport Amendment Bill, [B7-2016] ("**the Bill**") as per the notice issued 01- 06 - 2016.

Below is our comments as Uber B.V. which seek in the main to support the introduction of e-hailing within the legislation. Our view is that technology and innovation are able to contribute positively to the improvement of public transportation in South Africa. As such, legislation should endeavour to enable all categories contemplated within the National Land Transport Act to take advantage of the Technology.

Uber submits that E-Hailing, should be opened to all public transport modes that wish to use the technology.

Attached as **Annexure A,** is our submission to Portfolio Committee on transport.

Regards

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Yolisa Mashilwane
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Annexure A : Comments on the National Land Transport Amendment Bill, [B7-2016]

1. **Introduction**

1.1 Uber supports the objects and purports of the Bill which are, amongst others, to bring the National Land Transport Act, No 5 of 2009 ("**the Principal Act**" or "**the Act**") up to date with developments in the road-based public transport industry since the implementation of the Act. One such development is the arrival of Uber and other digital network or technology-enabled application services. With this in mind, Uber supports the committed endeavour in the Bill to address the changed landscape triggered by technology-enabled mobility solutions, and in particular, electronic hailing ("e-hailing").

1.2 Uber also notes that, to be effective, the Bill should take into account the views of all legitimate stakeholders, including road-based transport operators, passengers and the general public. Therefore, Uber, as an affected and interested stakeholder, takes the opportunity to make these submissions.

1.3 In these submissions we raise one principal issue, namely the introduction in the Bill of the concept of "e-hailing" where relevant and appropriate.

2. **Background**

2.1 Uber is a global technology company that offers an innovative technology-enabled application service (the "**Uber App**") in the road-based public transport industry that greatly benefits South African consumers in need of transportation services.

2.2 Uber was established in South Africa In August of 2013. Through its proprietary technology platform, Uber is able to help transportation service providers who seek to increase their earning potential by connecting them to riders looking for greater choice, safe and reliable public transport option.

2.3 The Uber App is able to provide a rider with predictable wait time and transparency into who the driver is and reliable fare estimates. The introduction of technology-enabled application services like the Uber App has resulted in higher service levels for riders and greater economic opportunities for transportation service providers. We believe that individual consumers and

communities benefit when citizens have access to a variety of transportation options including public transport, taxis, private vehicles and certainly options facilitated by technology platforms like the Uber App.

2.4 Uber App services are distinct from the independent transport service providers. Uber does not own a fleet of vehicles. Instead, independent business owners (Uber "driver-partners") use their own vehicles to provide transportation services to riders sourced through the Uber App. It is entirely their choice when they use the platform and for how long.

2.5 In order for potential passengers to contract with driver-partners for the provision of transportation services, they download and install the Uber application on their smartphone at no cost. Riders may choose from a variety of vehicle options with different prices and vehicle types, from the lower cost uberX service which includes entry level 4 passenger sedans, the uberVan with 7-8 seaters, or the higher-end uberBlack service that offers luxury sedan vehicles.

2.6 Once the Uber App is launched, the lead generation technology relies on Wi-Fi and GPS services on the smartphone to automatically set a rider's pickup location. Riders may also enter an exact location address or search for a specific venue by tapping on the pick-up location bar. Riders are able to predetermine the route, date and time of their journey. In addition, riders have the option to request a total cost estimate for their proposed trip. The suggested fare is determined as a function of the estimated times and distance of the journey. The formula and fare components are fixed, with only the final route and duration of the trip determining the final fare.

2.7 The ride request is sent to a driver-partner who is available and can pick up the rider within the shortest period of time. If one driver-partner declines the request, it is automatically routed to the next driver-partner who can quickly provide a ride. This e-hailing process continues until the request is accepted.

2.8 E-hailing is handled digitally with no dispatcher or traditional street-side hailing involved. The use of technology to efficiently connect riders to driver-partners minimizes the time and distance driven without a fare paying passenger increasing potential earnings for independent small business owners in South Africa's road-based public transport industry.

2.9 E-hailing also ensures that rider wait times are as short as possible increasing overall satisfaction with the service. The Uber App also allows riders to better anticipate when their vehicle will arrive to pick them up. Once a driver-partner accepts a ride request, the rider receives real-time information depicting both the car's approximate position as it moves towards them and its estimated arrival time. By eliminating uncertainty as to whether a ride can be booked, and when the pre-booked ride will arrive, the use of technology-enabled application services significantly increases the reliability of transportation service and safety (by allowing riders to make wise decisions, especially when traveling at night).

2.10 Vehicles used by transport service providers utilising e-hailing applications do not require any colour coding or branding. On the contrary, given the various tools and features imbedded in the technology-enabled application, a rider ordering a vehicle through the Uber App sees the driver's registration number, photo and vehicle type and can track the driver traveling towards him/her via a map imbedded in the Uber App. Given the high level of transparency, the rider knows exactly who is coming to pick them up, in what vehicle and at what approximate time. Not only do these features ensure safety in ways that were not previously possible, they effectively eliminate the need for colour coding, roof signs and other traditional branding requirements from a rider perspective. Therefore there is no need for distinguishing features.

2.11 In addition to some of the benefits of e-hailing outlined above, other significant benefits of the shift to technology-enabled application services include 1) electronic payment for transportation services (riders can elect to pay cash); 2) an easy to use rating system after each trip that helps maintain high standards; and 3) the promise of continuous innovation and improvement of transport services for all South Africans. Efficient digital network solutions like the Uber App offer important answers to pressing urban sustainability challenges including – how to mitigate traffic congestion, airborne pollution and the over reliance on private vehicle ownership.

2.12 We have provided this background information in order to contextualise our comments in paragraph 3 below.

3. Principal submission: "e-hailing"

3.1 The introduction of innovative e-hailing transport services is relatively new to the transport industry in South Africa. The service has so far been pegged under the metered taxi category

for regulatory and enforcement purposes. This was confirmed by the Transport Appeal Tribunal in a judgment handed down on 16 December 2015. Therefore, the proposed introduction of the concept of e-hailing is seen in a positive light as it gives legal recognition to e-hailing services as a distinct and independent public transport service.

3.2 The Bill introduces the concept of e-hailing through proposed amendments to sections 1 and 66 of the Principal Act. It does so by making reference to e-hailing in paragraph (c) of the proposed new definition of "*metered taxi* service", and in the proposed new subsections 66(4)(cA), (5) and (6).

3.3 However, while referring to the concept of e-hailing in this way, the Bill contains a gap (*lacuna*): there is no definition of "e-hailing". This means that the definition must be discerned from a reading of the definition of "*metered taxi service*" and from section 66.

3.4 In order to provide a better understanding of what e-hailing entails, we propose adding a definition of "*e-hailing*" into section 1 of the Act, as follows:

> *"'**Electronic hailing' or 'e-hailing'** means hailing or pre-booking a motor vehicle operated by the holder of an operating license or permit issued in terms of section 50(1) or section 84(2), by means of an e-hailing technology-enabled application service which–*
>
> *(a) enables the hailing or pre-booking of a vehicle electronically;*
>
> *(b) has the facility to estimate fares and electronically communicate the estimate to passengers in advance;*
>
> *(c) communicates the final fare to passengers at the conclusion of the trip; and*
>
> *(d) provides the prescribed details of the driver of the vehicle to the passenger or passengers.*

3.5 The inclusion of this new definition will have a number of advantages:

3.5.1 firstly, it broadens the e-hailing option beyond just cases involving metered taxi permits. In our view, e-hailing should be an option open to any operator, provided their permit can accommodate e-hailing. It seems unfairly discriminatory to limit the option to one

category of operators. Thus, for example, there is no good reason why an operator accredited as a tourist transport service, charter service cannot use an e-hailing application with an existing Operating License.

3.5.2 secondly, a clear description of e-hailing will be very beneficial as the market expands. While Uber was the first organisation to utilise e-hailing on a large scale in South Africa, other organisations like taxify (https://taxify.eu/en-za/cities-2/johannesburg/ are entering this market. That is something which Uber welcomes. Competition can only be productive. But when entering the market, new organisations will need to comply with the requirements for e-hailing set out in the Act.

3.6 We would therefore urge the drafters of the Bill to give careful consideration to our proposal as set out above and to make the change which we have drafted.

4. Other proposed amendments

4.1 Imposing moratoria on the issuing of operating licences

4.1.1 Both section 18(3) and 39(1)(b) of the Act empower municipalities to impose moratoria in respect of the issue of new operating licenses in certain circumstances. We recognise the need for this power as it is consistent with the role municipalities play as planning authorities. Our concern is simply that municipalities should be obliged to follow a public participation process before taking a decision to impose a moratorium, given the very serious implications of a moratorium, particularly with regard to employment and other job opportunities.

4.1.2 Given the adverse effect that is likely to materialise should a municipality issue a moratorium, we believe that sections 18(3) and 39(1)(b) should be drafted in such a way that they can be seen to be aligned with the provisions of the Promotion of Administrative Justice Act, No 1 of 2000 ("**PAJA**").

4.1.3 Municipalities are generally bound by the principles of administrative justice, which are derived from section 33 of the Constitution of the Republic of South Africa (the "**Constitution**") and the common law, and which have been given further effect to in PAJA. This means that when a regulatory entity exercises its powers in terms of section

18(3) or 39(1)(b), it must do so lawfully, reasonably and in a procedurally fair and objective manner.

4.1.4 "*Administrative action*" as defined in section 1 of PAJA includes a decision by an organ of state (like a municipality) exercising a public power or performing a public function in terms of any legislation (or in terms of an empowering provision) that (i) adversely affects rights, (ii) has direct, external legal effect and (iii) does not fall under any of the listed exclusions in PAJA.

4.1.5 In our view, a municipality's decision to exercise the power conferred on it by section 18(3) or 39(1)(b) adversely affects the rights of transport providers and drivers, as well as riders, and has the capacity to affect legal rights. Therefore, we have no doubt that it will qualify as administrative action.

4.1.6 In order to give effect to the right to procedurally fair administrative action, section 3(2)(b) of PAJA requires that an administrator must give a person whose rights are affected by any administrative decision (a) adequate notice of the nature and purpose of the proposed administrative action; (b) a reasonable opportunity to make representations; (c) a clear statement of the administrative action; (d) adequate notice of any right of review or internal appeal, where applicable; and (e) adequate notice of the right to request reasons in terms of section 5 of PAJA.

4.1.7 In light thereof, we propose an amendment to section 18(3), as follows:

"(3) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), such a municipality may give notice in the prescribed manner that it will no longer receive applications for operating licences for new services except in accordance with invitations given by it for specified services on specified routes or in specified areas in accordance with its integrated transport plan, either for the purpose of concluding a contract or because those routes or areas are already adequately served."

4.1.8 Similarly, section 39(1)(b) should be re-worded as follows:

"allow the operator to continue providing the service and, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), impose a moratorium on the issuing of new licenses on that route".

4.2 Regulations

Section 8(2) of the Act rightly obliges the Minister, before making regulations, to publish a draft for comment and then to consider the comments received. The same obligations are not explicitly required of MECs when making regulations in terms of section 10 of the Act. We therefore propose that a new section 10(2) be added, as follows:

"(2) Before making any regulations contemplated in subsection (1), the MEC must publish a draft of such regulations for public comment in the Provincial Gazette, and must consider any comments received in response to such publication."

4.3 Specification of vehicle

4.3.1 Section 54(5) of the Act sets out the requirements for applications for operating licences. One of these, in paragraph (e), is that the applicant must "*specify the vehicle or exact type of vehicle to be used for providing the services concerned.*"

4.3.2 In some instances, it is not possible for an applicant to specify the exact type of vehicle when making an application, because the applicant may not own a vehicle at the time. However, once a prospective driver-partner obtains an operating license, they may use their license or qualification as a basis to apply for a loan for their own vehicle or drive for a fleet owner with many different vehicle options or categories as outlined in paragraph 2.6 above. We therefore propose that this provision be amended to read as follows:

"(e) specify the vehicle or ~~exact~~ ~~type~~ category of vehicle to be used for providing the services concerned."

4.4 Summary disposal of applications

4.4.1 Section 59(3) of the Act allows the relevant regulatory entity, when no relevant or substantial objections are received in respect of an application, to dispose of that

application summarily. In our view, and in order to avoid significant waste of time and money, this provision should be mandatory rather than permissive. The relevant regulatory entity should be obliged to dispose of the application summarily where no relevant and substantial objections are received.

4.4.2 We therefore propose that section 59(3) be reworded to read as follows:

> *"Where no relevant and substantial objections are received in respect of an application, it ~~may~~must be disposed of summarily and where such objections are received, the entity must request further information or hold a hearing in the prescribed manner before taking a decision on the matter."*

5. Conclusion

Uber appreciates this opportunity to make these submissions. We are willing to amplify any of the submissions made and would welcome an opportunity to make oral submissions at the appropriate time so that our proposed amendments can be canvassed more fully.

B7/16
No: 4

Valerie Carelse - NLTA Amendment Bill

From: "Paul Browning" <paul@transforum.co.za>
To: <vcarelse@parliament.gov.za>
Date: 2016/06/28 8:26 AM
Subject: NLTA Amendment Bill

Dear Ms Carelse :

I submit the comments below for the consideration of the Committee.

Clause 1 - Amendment of Sec 1 (c) : Definition of 'integrated public transport network'

It is pleasing to see this amendment since it includes suggestions which I made on the draft Bill. These were to the effect that greater recognition should be given to the implementation of high-frequency bus corridors which were not Bus Rapid Transit systems. Municipal authorities, with very limited exceptions such as George, have concentrated on BRT routes without giving proper attention to improving the frequency and hours of operation of 'ordinary' bus services on corridors.

The proposed revised definition meets most of my concerns. I would, however, like to propose a minor but important change to Clause (a) of the definition. It suggests that Integrated Rapid Public Transport Networks (whether or not they are Bus Rapid Transit systems) should "have dedicated rights of way if road-based". This might be taken to mean that a corridor route should have such dedicated lanes along its whole length (even if it does not have all the 'bells and whistles' of BRT). That is not necessary. Priority measures (whether bus lanes, priority at junctions, and the like) need be introduced only where necessary. For much of the route buses and taxis can operate in general traffic.

My proposed (layman's) wording is therefore : "………have, if road-based, dedicated rights of way and other priority measures where appropriate and justified by traffic conditions,……"

NLTA Sec 79 – Withdrawal, suspension or amendment of operating licence or permit

Sec 79 (2) provides for the withdrawal or suspension of an Operating Licence where the holder has not complied with the conditions on which the Licence was issued, and Sec 79 (3) similarly provides for withdrawal where wrong information was given in the application.

Sec 62 describes the information which must be provided before the Operating Licence can be issued. Most of this can be objectively tested – were the required documents provided, and were they genuine. However, Sec 62 (c) merely requires the applicant to sign a statement to the effect that s/he will comply with labour laws and the sectoral determination (No.11 of 2005) of the Department of Labour. This statement is routinely (indeed, universally) ignored by the holders of Operating Licences for taxis.

I suggest an amendment to the wording of Sec 79 (3) of the substantive Act in the form of an addition after the words 'supplied to it' of the wording "or where it can be shown that the statement made by the applicant in terms of Sec 62 (c) is not being complied with".

I also suggest an addition to Sec 79 (2) (a) of the substantive Act, with the addition after the words 'regulation of traffic' of the wording "with particular reference to Sec 90 (3) of this Act".

Sec 90 (3) makes the holder of the Operating Licence equally responsible for acts or omissions by his driver, unless the OL holder can show that s/he has taken reasonable measures to prevent the act or omission. It is important that the owner of the vehicle (the holder of the Operating Licence) should be held accountable for the driving practices of his or her driver. Bus companies accept this as a matter of course; the same responsibility must now be placed upon the holder of a taxi Operating Licence, and my proposed amendment would help to emphasise that.

I would be willing to make a verbal presentation to the Committee.

Regards,

Paul Browning
Public Transport Analyst

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SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIA' SALG
Inspiring service delivery

B7-16 No.5

Ms DP Magadzi, MP
Chairperson
Portfolio Committee for Transport
P O Box 15
Cape Town
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Dear Honourable Chairperson

SALGA WRITTEN SUBMISSION ON THE PROPOSED NATIONAL LAND TRANSPORT AMENDMENT BILL [B 7-2016]

1. PURPOSE OF THE SUBMISSION

We would like to express our appreciation for being afforded the opportunity to provide input to the development of the National Land Transport Amendment Bill. Any proposed legislation that has a bearing on public transport will naturally have implications for municipalities given that most public transport management and operations are located in "municipal spaces". SALGA's input, as the representative body of local government in the Republic, is on behalf of municipalities and should therefore be considered before any such legislation is finalized. Further, any input provided by SALGA should not be construed as substituting any input that you may have received directly from individual municipalities. Herewith, please receive our written submission for your consideration.

2. WRITTEN SUBMISSION AND COMMENTS ON THE NATIONAL LAND TRANSPORT AMENDMENT BILL [B 7-2016]

2.1 General comments

SALGA appreciates the challenges that are associated with the bus contracts administered by provinces. It notes the need by the Department of Transport and the provinces through Committee of Transport Officials to extend the old and existing contracts by three (3) years. However, the insertion of certain clauses in the Amendment Bill to address this challenge should not seek to delay and or derail the assignment of the public transport function to municipalities. The National Land Transport Act was promulgated in 2009 with an intention that provinces were going to empower municipalities to take over the public transport function which also include the contracting function but it's been seven (7) years and none of what was stipulated in the act has happened in terms of assignment.

2.2 Definitions

The definition of an association (which has been added) needs to clarify the legal standing of an association, particularly in relation to their members. The Bus Rapid Transit (BRT) negotiations are forcing all municipalities implementing BRT to acknowledge associations.

The National Land Transport Act provides for provinces to continue performing a contracting function, unless that function is assigned by the Minister of Transport. It is not clear why now in the definition of a contracting authority provinces are said to be contracting authorities subject to section 11 (1)(c) (xxvi) which is a section that only applies to municipalities in the principal act.

The definition of the integrated public transport network in the Amendment Bill is welcome. However, the words, "if roads based" when referring to dedicated right of way, should not be limited to 'road based' but <u>also include rail</u>. Thus the words "if road based" should be excluded. However, we propose that Section (a) of the definition be rephrased to: <u>have dedicated median or kerbside, with or without bus rapid transit systems</u>. Section (b) of the definition be also rephrased: <u>which are high volume bus corridors served by an integrated feeder system and complementary system</u>.

The extension of the meter taxi service definition in paragraph (c) to include services like "Uber" needs to be reworked so that the outcome is that the fee payable must be determined up front.

The definition of 'non-motorised transport' should state: <u>and both non-motorised and motorised wheelchairs and/or other similar modes</u>. If it need to be more specific, the 'non–motorised transport' definition must also include <u>electric bikes, pedicabs and sedgeways</u>. However, the additional problem with a pedicab is that it carries passengers but is non-motorised.

The definition of targeted categories of passengers in bullet two (ii) when it refers to movements is unclear as it is too inclusive.

2.3 Amendment of section 5 of Act 5 of 2009

The functions of the Minister in section 5 need to also refer to the Road Traffic Act and associated functions in terms of this act.

2.4 Amendment of section 8 of Act 5 of 2009

Regulations by the Minister of Transport in this section should also include those regulations that deal with the provision of public transport to all categories.

Subsection f (A) needs to make provision for a consultation process so that the recurring violent protests by taxi operators can be avoided.

Subsection 8(1) (h) amendment assumes that this amendment enables branding per Municipality and takes into account the amendment to allow for alternative branding of 6m vehicles – this needs to be confirmed.

Paragraph (y) in the Amendment Bill refers to universal access plans. This term is not clear and should be defined in the definitions section.

2.5 Amendment of section 9 of Act 5 of 2009

Minister of Transport has the powers to receive an annual report on the state of transport affairs in the Province. This report includes reports from municipal regulatory entities. In order to compile this report, municipalities will need to increase capacity so that they have a dedicated resource to execute the mandate.

2.6 Amendment of section 11 of Act 5 of 2009

In section 11(1) (a) (xi) reference is made to Section 41A but there is no Section 41A in the principal Act – it needs to refer to the new Section 41A.

The proposed section 11 (b) (viiA) is unclear especially in terms of services provided in the province. It needs to be well defined. In addition the part about a relevant municipality or municipalities not meeting the requirements or criteria prescribed by the Minister is not clear. What criteria are being referred to?

In subsection viiB, the function of concluding contracts for dedicated services for transporting scholars is allocated to provinces. Please clarify why this is a provincial function alone? Most scholar transport services are within municipal boundaries. Secondly, why are scholar transport services not part of the integrated public transport network?

In subsection 11(1) (c) (v), the amendment is contrary to the Rail Management Green Paper. There is agreement with the consultation until such time as devolution is affected. Due consideration needs to be given to this potential long term conflict. The same comment applies to the amendment of Section 11 (1) (c) (xix).

The substitution in subsection 2 refers to assigning functions contemplated in subsection 1(a). Why is the assignment limited to item viii and not to the whole section 1(a) as stipulated in the principal Act?

The substitution for subsection (4) to include a part of an "acceptable" integrated transport plan is vague and needs to be defined as this this section lacks clarity as to what is expected.

The proposed amendment to Section 11 (6) is not agreed to. The statement "unless that function is assigned to a Municipality by the Minister" cannot be deleted. Rather, after Minister the words and/or can be added. This deletion contradicts Section 11 (4) as well as the new 11 (8) et al. The amendment appears to only focus on the contracting function where everything else (e.g. function indicated in subsection 1(a)) is reduced to the contracting function.

The proposed subsection 8 needs to be rephrased for ease of reference.

Subsection 9 (b) needs to clarify what it is meant by "capacity building" and what is meant by the term "acceptable". The integrated transport plans (as per the principal act and or amendment) should be extended to every 10 years and reviewed every five years.

Subsection 10 (d) indicates that the Minister may prescribe requirements and criteria with which municipalities must comply in order to conclude contracts contemplated in subsection (1) (c) (xxvi) in consultation with the Minister responsible for local government matters. Organized Local Government does not support this clause. The function of contracting for municipal services should remain as stipulated in the current National Land Transport Act. In this regard the National Department of Transport (in addition to provinces) needs to capacitate municipalities to properly perform the contracting function, since the provision under the current National Land Transport Act of leaving the capacitation of municipalities to provinces has not worked to date. Capacitation of municipalities should be a joint effort between national and provincial spheres of government.

2.7 Amendment of section 15 of Act 5 of 2009

Please clarify under subsection 2 of section 15 which modes are being referred to in terms of the function of an intermodal planning committee to coordinate and integrate public transport between the modes.

2.8 Amendment of section 18 of Act 5 of 2009

The proposed amendments are not supported. The amendment should rather state: <u>A Municipal Regulatory Entity must receive and decide on applications relating to operating licences for services wholly within or emanating in the area of jurisdiction of the Municipality concerned.</u> Further the word "intraprovincial" should be changed to <u>interprovincial services</u> where the services cross the boundaries of the Province. This also relates to Section 24 (1) (b) and to Section 67 on Charter Services.

2.9 Amendment of section 20 of Act 5

Section 20 prescribes the National Public Transport Regulator function and Sections 23 & 24 prescribe the Provincial Regulatory Entity. However there are no clauses that prescribe the Municipal Regulatory Entity.

2.10 Amendment of section 24 of Act 5 of 2009

Subsection c refers to "operating licence". Other modes that need operating licences, and do not belong to associations also need to be addressed.

2.11 Amendment of section 36 of Act 5 of 2009

Subsection 1 and 4 of section 36 states that "integrated transport plans need to be prepared, submitted and approved by the MEC". Municipal Councils are responsible for approval of these plans and thus reference the MEC must be removed. Integrated transport plans are shared with the province in line with the IGR Act.

2.12 Amendment of section 39 of Act 5 of 2009

The addition of subsection 3 does not cater for situations where no licenses have existed. Furthermore, the planning authority cannot take steps to cancel operating licences and permits. The text should rather state that, <u>upon recommendation/request of the planning authority, the regulatory entity shall take steps/ measures to cancel</u>.....

2.13 Amendment of section 42 of Act 5 of 2009

The clause about "substantive provision" in section 42 subsection b is vague. In the context of negotiations, this can be very long and cumbersome. There is a need to identify what the problem is that this clause is seeking to address. The amendment to Section 42 of the principal Act brings in a new dynamic to the process, where the MINMEC agreement of initial negotiation has been excluded and the subsidized services to be put out to tender.

2.14 Amendment of section 47 of Act 5 of 2009

The amendments proposed in section 47 have the following implications:

- The principal Act states 7 (seven) years from the commencement of that Act which is 2016 – the current year.
- If the proposed amendment goes through, it will mean that the time period is shifted from 2016 to 2020.
- This will have serious financial and operating consequences.

It is thus recommended to change it to 2 (two) years, unless already concluded

2.15 Amendment of section 48 of Act 5 of 2009

The scheduled non contracted service indicated in section 48 subsection 2 (a) must be defined as part of the definitions as there is no clarity in the act as to what these services are.

2.16 Amendment of section 54 of Act 5 of 2009

In section 54 (2) after the phrase "wholly within the area of jurisdiction", add the words <u>or emanating from the area but not going interprovincial</u>

2.17 Amendment of section 62 of Act 5 of 2009

The deletion of paragraph (f) of section 62 (1) is questionable – if there is no proof of insurance cover there will be a potential increase in liabilities and safety risks. This deletion is not agreed to.

2.18 Amendment of section 66 of Act 5 of 2009

There is use of a term "prescribed" in paragraph cA, it would have been better if it was in the Act.

2.19 Amendment of section 70 of Act 5 of 2009

We propose the following amendment to section 70: <u>planning authorities to develop guide lines on how tuk tuks can be integrated in their area of jurisdiction, and prescribe the services for which they can be used, and how those services can be operated. The guidelines should address the scope and range of operations, and prescribe the distance, for example not more than 5 km radius.</u>

The criteria and conditions must address the following critical issues to ensure that the introduction of two and three wheeler public transport is undertaken successfully:

- Safety of passengers and other road users
- Unfair competition with other public transport operators (and without consultation)
- Impact on the surrounding land use
- Vehicles must be SABS approved in respect of safety standards
- Drivers must have Professional Driver Permits;
- The Province must advertise the application and hear the views of interested parties as per the NLTA regulations
- Ranking, holding and loading areas for the service must be available and be designated by the City where on street; and
- All operators should not operate along routes of more than 5km or over a radius greater than 5 km."

The Operating Licences for Tuk Tuks may include conditions prescribed by the planning authority in line with their guidelines

A Section on 4+1/ 7 seater vehicles doing last mile services should be added as a mode of transport in the amendment. These should be included in the ITP's of planning authorities. This service works similar to a minibus. Such services need to be defined, including guidance on how they should operate

2.20 Amendment of section 72 of Act 5 of 2009

Section 72 must be clearly defined especially for non-subsidised scholar transport to be regulated.

2.21 Insertion of new sections 93A in Act 5 of 2009

The new clause on delays is supported by Organized Local Government. However, it must not be used to perpetuate lack of capacitation of municipalities by national and provincial Departments of Transport in order to take their responsibilities by exempting other spheres of government to perform their functions.

2.22 Insertion of new sections 93B in Act 5 of 2009

Legislation must ensure that there is seamless procedure to avoid duplication of service and planning.

2.23 Amendment to Act 5 of 2009

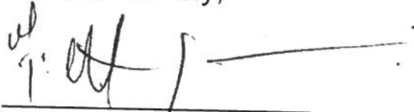
SALGA proposes a further section to address the need for a Traffic Impact Assessment guideline. There needs to be one Transport impact assessment that includes public transport, walking and cycling, and freight transport.

Tuk tuks, metered taxis, 4 plus 1, and Uber pool needs to be integrated into a new chapter on demand responsive mobility.

3. CONCLUDING REMARKS

Organized Local Government is particularly concerned about the continuous referral within the Amendment Bill, to criteria and requirements prescribed by the Minister under subsection (10) (d) that a municipality must meet in order to conclude subsidized service contracts, commercial service contracts, negotiated contracts, and stopgap contracts contemplated in section 41A. The nature of these criteria and requirements is unclear and thus this section must be removed from the amendment. The current Act under section 11 (1) (c) (xxvi) gives the function of concluding subsidized service contracts, commercial service contracts, and negotiated contracts in section 41 (1) with operators for services in municipalities to municipalities. At no point should this function be given to provinces. If there is a challenge of capacity on the side of municipalities to perform this function then both national and provincial governments need to capacitate municipalities. We do however acknowledge that provinces have a role to play in issuing contracts for inter-municipal services. The omission of the role of provinces in issuing contracts in the principal Act is noted, however the new provision is detrimental to municipalities.

Yours sincerely,



THABO M MANYONI
CHAIRPERSON
DATE: 30 June 2016