



NEGOTIATING MANDATE

TO : HON M I RAYI
CHAIRPERSON OF THE SELECT COMMITTEE ON
ECONOMIC AND BUSINESS DEVELOPMENT

NAME OF BILL : ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC
OFFENCES AMENDMENT BILL

NUMBER OF BILL : [B38B-2015]

DATE OF DELIBERATIONS : 1 JUNE 2018

VOTE OF THE LEGISLATURE:

The Portfolio Committee on Public Works, Roads, Transport and Community Safety confers the delegation representing the North West Province with the authority to negotiate in favour of the Administrative Adjudication of Road Traffic Offences Amendment Bill [B38B-2015]; taking into account the objections as attached herewith.

HON. G O MOLAPISI
CHAIRPERSON: PUBLIC WORKS, ROADS AND TRANSPORT AND COMMUNITY
SAFETY

DATE: 1 June 2018

**PORTFOLIO COMMITTEE ON PUBLIC WORKS, ROADS AND
TRANSPORT AND COMMUNITY SAFETY**



NORTH WEST PROVINCIAL LEGISLATURE

**REPORT ON THE ADMINISTRATIVE ADJUDICATION OF
ROAD TRAFFIC OFFENCES AMENDMENT BILL [B38B-2015]**

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ACRONYMS

PFMA	PUBLIC FINANCE MANAGEMENT ACT
MEC	MEMBER OF THE EXECUTIVE COUNCIL

1. INTRODUCTION

The Constitution of the Republic of South Africa charges Legislatures with the responsibility to make laws. Section 76 of the Constitution of the Republic of South Africa further details the process to be followed in processing Bills that affect provinces. This is the basis upon which Public Hearings for the Expropriation Bill were conducted.

2. PROCESS FOLLOWED

The Administrative Adjudication of Road Traffic Offences Amendment Bill [B38B - 2015] was formally referred by the Speaker, Honourable S.R. Dantjie to the Portfolio Committee on Public Works, Roads and Transport and Community Safety for consideration and processing.

The Portfolio Committee received a presentation from the National Council of Provinces, Permanent Delegate, Hon. Nthebe and the National Department of Transport on the Administrative Adjudication of Road Traffic Offences Amendment Bill [B38B - 2015], at a meeting held on 24 November 2017. Following the briefing, the Committee embarked on Public Hearings throughout the province on 3 April 2018 as follows; Ngaka Modiri Molema District (Letsopa New Community Hall - Ottosdal), Bojanala District (Moretele Local Municipality Community Hall - Moretele), Dr Kenneth Kaunda District (Tshing Ext. 5 Hall - Ventersdorp) and Dr Ruth Segomotsi Mompati District (Utlwanang Community Hall - Christiana). A total of **831** people were reached in various districts of the Province.

Public Hearings were re-convened on 22 May 2018 at the following districts: Dr Kenneth Kaunda district (Chris Hani Hall - Wolmaranstad) and Ngaka Modiri Molema district (Delareyville Community Hall - Delareyville). A total of **690** people were reached in these districts of the Province.

3. OBJECTIVE OF THE ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT BILL [B38B-2015]

To amend the Administrative Adjudication of Road Traffic Offences Act, 1998, so as to substitute and insert certain definitions; to improve the manner of serving documents to infringers; to add to the functions of the Road Traffic Infringement Authority; to repeal certain obsolete provisions; to establish and administer rehabilitation programmes; to provide for the apportionment of penalties; to provide for the establishment of the Appeals Tribunal and matters related thereto; to effect textual corrections; and to provide for matters connected therewith.

4. PRESENTATION BY NCOP PERMANENT DELEGATE

4.1 The Administrative Adjudication of Road Traffic Offences Act, 1998 (Act no. 46 of 1998) (the Act) seeks to promote road traffic quality by providing for a scheme that discourages road traffic contraventions and facilitate the efficient adjudication of road traffic infringements.

4.2 The Act has been in operation on a pilot phase in the jurisdictional areas of Tshwane and Johannesburg Metropolitan Municipalities where some challenges and inefficiencies have been identified. The said challenges need to be addressed before the national roll-out.

4.3 *Clause 1:*

- Amends section 1 of the Act, by adding, deleting and substituting certain definitions.

4.4 *Clause 2:*

- Amends section 4 of the Act which provides for the objects and functions of the Authority.
- Clause 2 mainly deletes subsection (2)(e) of section 4 of the Act, which deals with the issuing by the registrar, of a warrant against an infringer who has failed to comply with an enforcement order made in terms of the Act. The rest of the amendments are consequential amendments as a result of deletion of Section 4(2)(e).

- The deletion of this subsection is aligned with the proposed repeal in clause 11 of the Bill, of Section 21 of the Act, which deals with the issuing of warrants by the registrar. The clause also deletes section 4(4)(a) and (c) which deals with the persecution of offences in criminal trials.

4.5 *Clause 3:*

- Amends section 11 of the Act, which provides for the administrative staff and remuneration.
- The clause removes the requirement of the Minister acting in consultation with the Minister of Finance in respect of the approval of pensions and benefits determined by the Board.

4.6 *Clause 4:*

- Repeals section 12 of the Act which provides for the appointment of sheriffs.

4.7 *Clause 5:*

- Clause 5 of the Bill amends section 13 of the Act, which provides for the financing of the Authority. Clause 5 inserts a new paragraph in section 13 of the Act to provide that the finances of the Authority are also derived from penalties issued and collected by or on behalf of an issuing authority. The Act defines an “issuing authority” as a local authority, a provincial administration or the Road Traffic Management Corporation established under section 4 of the Road Traffic Management Corporation Act, 1999 (Act No. 20 of 1999), and the Bill adds “any other state institution declared by the Minister by regulation to be an issuing authority”, to the list.

4.8 *Clause 6:*

- Clause 6 of the Bill amends section 15 of the Act, which provides for the banning account of the Authority. Clause 6 provides that the Authority may open and maintain one or more bank accounts with the approval of the Board of the Authority. Currently section 15 requires the approval of the Director-General.
- Clause 6 also adds that the bank account(s) must be used to deposit monies received by the Authority and money received from issuing authorities, driving licence testing centres and registering authorities.

4.9 *Clause 7:*

- Clause 7 of the Bill amends section 17 of the Act which provides for issuance of infringement notices and ascertainment of demerit points position, amongst other things.
- Also amends 17(1)(e) to indicate that the demerit points positions may be ascertained in the prescribed manner.
- It further deletes section 17(1)(f)(iv) which deals with election to be tried in court. The option to elect to be tried in court is substituted with Appeals Tribunal which is introduced by Clause 29A-29K.
- Lastly, the clause amends section 17(5) to penalize a person for permitting another to take charge of a vehicle without ascertaining the required particulars of that person.

4.10 *Clause 8:*

- Clause 8 of the Bill amends section 18 of the Act which makes provision for the right of an infringer to make representation to a representations officer.
- The amendment provides that an infringer who has been served with an infringement notice may make a representation in the prescribed manner, with respect to that notice and infringement to the Authority.
- If the representations are rejected the infringer may no longer elect to be tried in court but has a right to appeal or review such decision to the Appeal Tribunal (“the Tribunal”).

- The clause also provides for the re-service of a notice where a success representation alleges that procedures of service (Infringement Notice, Courtesy Letter and Enforcement Order) were not followed.

4.11 *Clause 9:*

- Clause 9 of the Bill amends section 19B of the Act, which provides for the payment of penalties imposed for traffic infringements.
- The clause provides that an Enforcement Order will be issued for insufficient payment or dishonoured cheques, instead of a warrant of execution against him or her.
- It further provides that failure to comply with payment arrangements in terms of a notice, for instance arrangements to pay by installment, will lead to an Enforcement Order for the full amount.

4.12 *Clause 10:*

- Clause 10 of the Bill amends section 20 of the Act by deleting subsection (3)(b) of section 20. Section 20 of the Act provides for enforcement orders issued by the registrar in respect of failure to pay fines imposed for traffic infringements.
- Section 20(3)(b) stipulates that an enforcement order must state that failure to comply with the requirements of the enforcement order will result in a warrant being issued to recover the applicable penalty and fees.
- The deletion of this paragraph is in line with the repeal (in clause 11) of section 21 of the Act, which deals with the issuing of warrants by the Registrar. The clause adds new section 20(5)(bA) which deals with the prohibition of issuing of a permit or licence issued in terms of any road traffic legislation or transport legislation if an enforcement order has been issued against the infringer.

4.13 *Clause 11:*

- Clause 11 of the Bill repeals section 21 of the Act. Section 21 of the Act empowers the registrar to issue a warrant against an infringer who fails to comply with an enforcement order which required him or her to pay the penalty and fees.
- The proposed repeal means that the consequences of the failure to comply with an enforcement order will be dealt with in terms of section 20(5) of the Act, which provides that an infringer who does not comply with an enforcement order may not be issued with a driving licence, professional driving permit or licence disc in respect of a motor vehicle registered in the name of an infringer, until such enforcement order has been complied with or has been revoked.
- In respect of infringement notices, section 19(2) © of the Act provides that if an infringer fails to comply with an infringement notice, the Authority must issue a courtesy letter and serve it on the infringer, stating that a failure to comply with the requirements of the courtesy letter within the time permitted will result in the registrar issuing an enforcement order in terms of section 20 of the Act.

4.14 *Clause 12:*

- Clause 12 of the Bill repeals section 22 of the Act, which provides for the procedure in respect of a trial of an infringer who does not pay the penalty but elects to be tried in court. This proposal is in line with the repeal of the provisions dealing with the election to go to court.

4.15 *Clause 13:*

- Clause 13 amends section 25 of the Act which provides for the disqualification of infringers from driving or operating a motor vehicle after an infringer has exceeded the prescribed threshold of demerit points. The amendment also introduces the concepts of “operator or a juristic person who is not an operator” and “learners drivers” in respect of categories of infringers who may incur demerit points in terms of the Act.

- Clause 13 also amends section 25(3) to indicate that operator, or a juristic person who is not an operator must immediately hand in his/her motor vehicle licence disc, operator card or any other permit, card or licence issued in terms of road traffic legislation or transport legislation, where applicable during disqualification period.

4.16 **Clause 14:**

- Clause 14 of the Bill amends section 29 of the Act which provides for the categorization of offences, infringements and demerit points. The new amendment clarifies that the Minister, acting with the concurrence of the Minister of Justice and the MEC of each province, may for the purpose of the Act prescribe infringements and offences. The amendment removes the requirement of categorizing transgressions into “minor infringements, major infringements” and other offences.

4.17 **Clause 15:**

- Clause 15 primarily introduces a new Chapter IVA in the Act. Clause 15 provides for the establishment of the Appeals Tribunal, whose main function is to hear appeals and review and adjudicate on any matter brought to it by an infringer aggrieved by a decision taken by the representation officer in terms of the Act.
- The Chairperson and other members of the Tribunal are appointed by the President. Clause 15 also provides for functions of the Tribunal, qualifications of members of the Tribunal, conditions of appointment of the Deputy Chairperson of the Tribunal, sitting of the Tribunal, decisions of the Tribunal, acting by the member of the Tribunal, appeals against the decisions of the Tribunal and the administrative work of the Tribunal.

4.18 **Clause 16:**

- Clause 16 of the Bill amends section 30 of the Act, which provides for service of documents on an infringer, personally or by registered mail. The proposed amendment provides for service of documents by means of postage and electronic service or communications as prescribed.

- The amendment also provides that a document is deemed to have been served on the infringer on the tenth day of postage or of the electronic service, and such electronic service being reflected in the National Road Traffic Offences Register, unless evidence to the contrary is adduced, which evidence may be in the form of an affidavit.

4.19 *Clause 17:*

- Clause 17 of the Bill amends section 31 of the Act which provides for penalties. Clause 17 in effect provides that laws of prescription are not applicable to traffic penalties and fines. In terms of clause 8 of the Bill, if a representation is successful as a result of prescribed procedures not being complied with, the infringement notice, courtesy letter or enforcement order may be reserved.

4.20 *Clause 18:*

- Clause 18 of the Bill substitutes the whole of section 32 of the Act, which provides for the apportionment of penalties. The new substitution provides that any penalty received by the Authority in terms of the Act must, as prescribed, after deduction of an amount equal to the discount, be paid over to the Issuing Authority. Any prescribed fees or monies collected by or on behalf of the issuing authority in terms of the Act must, as prescribed, also be paid to the Authority.

4.21 *Clause 19:*

- Clause 19 of the Bill amends section 34 of the Act which deals with the power of the Minister to make regulations. Clause 19 adds a new paragraph in section 34 and give the Minister the power to make regulations on the manner in which an infringement notice, courtesy letter or enforcement order may be reissued.

4.22 **Clause 20:**

- Clause 20 of the Bill amends section 35 of the Act which deals with transitional provisions. Clause 20 provides that a notice issued in terms of section 56 or 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), before the date of commencement of section 17, may be continued and finalized under the Criminal Procedure Act, but the said notice may not be issued after that commencement date in respect of an infringement, thus removing the reference to an “offence”. Section 17 of the Act provides for the issuing of an infringement notice by an authorized officer or a person duly authorized by an issuing authority.

4.23 **Clause 21:**

- Clause 21 of the Bill generally provides for the substitution of certain expressions. In effect, the name “Road Traffic Infringement Agency” is replaced with “Road Traffic Infringement Authority”. The expressions “major infringement” and “minor infringement” are to be replaced with “infringement” throughout the Act.
- The expression “national contraventions register” is replaced with “National Road Traffic Offences Register”.

4.24 **Clause 22:**

- Clause 22 of the Bill provides for the short title and commencement.

5. **DELIBERATIONS ON THE PRESENTATION**

The Committee deliberated on the following;

- 5.1 Is there a declaration of interest of officials in the Adjudication Committee.
- 5.2 With reference to slide 17 & 22 on the infringement of the 10th day, should something be posted through the post office. will it arrive after 6 weeks.
- 5.3 Which organisations were included in the drafting of this Bill as it is evident that truck drivers and truck owners were not consulted.
- 5.4 Has the Bill been piloted for four years.

6. PUBLIC INPUTS/CONCERNS EMANATING FROM PUBLIC HEARINGS

After the presentation the public raised the following concerns:

DR NGAKA MODIRI MOLEMA DISTRICT:

- 6.1 The department needs to clarify how the de-merit points will work and affect the community.
- 6.2 A concern was raised that the general public can not trust law enforcers because of corruption by some Traffic Officials.
- 6.3 The law on the equity of charges for penalties, taxi operators will lose their permits, this will lead to job losses in the industry and in the province.
- 6.4 The Appeals Tribunal: if the tribunal does not resolve issues to your satisfaction can it be taken to the courts as referred to in Clause 7 of the Bill and if this clause is not changed it will be unconstitutional.
- 6.5 Clarity was sought from the department on the entire process with regard to the suspension of driving licenses.
- 6.6 The Taxi Association raised concerns on how this Bill will affect operations with regard to special permits and operating licenses since the permit system in the Province is not user friendly.
- 6.7 Delay in receiving traffic fines in the rural areas due to Post Office issues is a huge concern, the implementation of the Bill will make it worse for the Post Office.

The following deliberations were raised on 22 May 2018 when the Public Hearing was re-convened:

- 6.8 The Community wanted to know the meaning of AARTO and it's implications to the broader community.
- 6.9 The Community raised concern that they were not consulted and briefed on the AARTO Bill.

- 6.10 The department needs to clarify how the de-merit point system will work and how will it affect communities.
- 6.11 The Taxi Association members wanted clarity on how the AARTO Bill is going to affect the taxi operations, they complained that they were not consulted on the AARTO Bill.
- 6.12 The Taxi operators feel that Traffic Officers target them more than any other drivers and as such taxi operators end up getting more than one traffic fine per day. Should the Bill be passed almost all taxi operators will lose their licences within three months.

DR RUTH SEGOMOTSI MOMPATI DISTRICT:

- 6.13 Clarity was sought on whether habitual infringers will not take advantage of the prescribed rehabilitation programs which the new bill has introduced, and who will be footing the bill of those attending the rehabilitation program.
- 6.14 It is difficult to obtain special permits on time due to traffic systems that are always offline.
- 6.15 Which monitoring tool will be used for driving licenses that are not properly obtained.

BOJANALA DISTRICT:

- 6.16 Clarity was sought on the 12 de-merit points, are they per year or for every five year cycle.
- 6.17 Taxis are not subsidised in the province, these are considered as tools of trade for drivers, what will be the impact of the demerit system on the ability to earn a living for drivers in the province.
- 6.18 Clarity was sought from the department on how will affected people be educated on the new AARTO system.

- 6.19 The withholding of vehicle licenses due to infringement, this will lead to lawlessness and contribute to more fake permits. There are several cars in Moretele about 38, which are on the road without permits due to their permits being withheld in Gauteng.
- 6.20 When a driver's license is suspended due to the demerit system, are you able to get a license again or are the privileges withdrawn forever.

DR KENNETH KAUNDA DISTRICT:

- 6.21 Which Infringements will carry de-merit points and also be clarified on the validity of fines.
- 6.22 Will there be job opportunities created for the young unemployed people created by the Agency (AARTO).
- 6.23 Provincial Traffic Offices have experienced challenges with lack of resources, will ARTIA ensure that Provincial Offices are well equipped in order to administer the new law effectively.
- 6.24 Communities pleaded that more platforms on the Bill be created for communities to fully understand the Bill before it is passed into an Act.
- 6.25 Clarity was sought as to what will happen to outstanding traffic fines when the Bill has been passed into an Act.
- 6.26 If a person commits an infringement with a borrowed car, who will be liable to pay the fine.
- 6.27 Clarity was sought on the traffic rehabilitation programs, how long will they be managed or administered, will there be local offices for rehabilitation programmes.
- 6.28 Should a license be suspended, will a person be liable for a fine.
- 6.29 Clarity was sought as to what will happen to people driving without drivers' licenses.

The following deliberations were raised on 22 May 2018 when the Public Hearing was re-convened:

6.30 The mobilisation of the Bill was not properly administered; members of taxi associations were not consulted on time, in order for them to provide informative inputs on the Bill.

6.31 Communities are not in favour with the twelve de-merit point system that is suggested in the Bill.

7. ADOPTION OF THE BILL

The Bill was accepted and adopted by Public Hearing attendants at Bojanala district, Dr Kenneth Kaunda district and Dr Ruth Segomotsi Mompati.

The Bill was not accepted and adopted on the 3 April 2018 and 22 May 2018 by Public Hearing attendants at Ngaka Modiri Molema district.

8. RECOMMENDATIONS OF THE PORTFOLIO COMMITTEE

The Committee recommends the following;

8.1 The implementing agency RTIA must submit a detailed report on the outcome of the pilot project that was conducted in Gauteng Province to the Committee within 7 days.

8.2 The Department of Transport disseminate information on the demerit point system throughout the province at road traffic centres and post offices.

9. ACKNOWLEDGEMENTS

The Chairperson of the Portfolio Committee on Public Works, Roads and Transport and Community Safety thanks all Members of the Portfolio Committee for their commitment to the oversight process of the Administrative Adjudication of Road Traffic Offences Amendment Bill [B38B - 2015].

The cooperation of the MEC for Community Safety and Transport Management, as well as senior officials from the department is highly appreciated.

In addition, the Chairperson of the Committee extends a word of thanks to the National Council of Province permanent delegate and officials from the national Department of Transport.

The Chairperson of the Committee would also like to thank the support staff for all the work they rendered in the processing of this Bill and the compilation of this report.

10. ADOPTION OF THE REPORT

The Portfolio Committee recommends that the House approve the passing of the Administrative Adjudication of Road Traffic Offences Amendment Bill, [B38B - 2015] and mandate the North West Permanent Delegate in the National Council of Provinces to vote in support of the Administrative Adjudication of Road Traffic Offences Amendment Bill [B38B- 2015] as tabled by the Minister of Transport.

I therefore present to this House, the report of the Portfolio Committee on Public Works, Roads and Transport and Community Safety.



HON G O MOLAPISI
CHAIRPERSON: PUBLIC WORKS, ROADS AND TRANSPORT AND COMMUNITY SAFETY

DATE: 1 June 2018