**DEPARTMENT OF TRANSPORT**

**NATIONAL LAND TRANSPORT AMENDMENT BILL, 2016 [B7B−16]: COMMENTS SUBMITTED TO NATIONAL COUNCIL OF PROVINCES IN NEGOTIATING MANDATES AND RESPONSES BY THE DEPARTMENT OF TRANSPORT**

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| **No.** | **Clause of the Bill** | **Section of the Act** | **Comment** | **Response** |
| **Eastern Cape** | | | | |
| 1 | General |  | The Province votes in favour of the Bill | The Department welcomes the support. |
| 2 | 3(e) | 8(1)(y) | It is proposed that section 8(1)(y) be amended to also include the timeframe in terms of which the vehicles and facilities to be made able to accommodate the needs of targeted passengers. It is proposed that section 8(1)(y) be amended as follows:  “S 8(1)(y) “guidelines, desired outcomes and timeframes for vehicles and facilities to accommodate the needs of targeted categories …” | The Department disagrees. Setting timeframes will mean setting targets and this will have financial implications. |
| 3 | 6 | 10A(1) | It is proposed that section 10A (1) be amended as follows:  “10A(1) “The Minister, [and] all MECs and planning authorities must, in the performance of their functions under this Act take steps to promote accessible transport and non-motorised transport.” | The Department agrees to the proposed change: effects an improvement. |
| 4 | 7(i) | 11(1A) | It is proposed that section 11(1A) be amended as follows:  “(1A) (c) The Minister [may] must, in writing and within the period of [not more than] 60 days of receipt of the application grant the exemption with or without conditions, or refuse the exemption and provide reasons for such refusal.  (d) If any such condition is not complied with, the Minister may after giving the relevant municipality notice of its failure to comply with such condition and an opportunity to remedy such failure, withdraw the exemption concerned or determine new conditions.  (e) The Minister may, from time to time, review any exemption granted or condition determined in terms of this subsection, and if he or she deems it necessary, withdraw such exemption or delete or amend such condition, Provided that the relevant municipality had been given notice or review of the exemption and or condition and given an opportunity to make representations before the review.” | The Department agrees subject to the period of 60 days being changed to 90 days.  The Department is of the view that this process rests within the intergovernmental relations engagements and it is therefore unnecessary to legislate it.  This is not necessary to regulate. |
| 5 | 9 | 13 | It is proposed that section 13 be amended as follows:  By the deletion in subsection 1 of the word “and” at the end of paragraph (f) and the addition of the word “and” at the end of paragraph (g) and the addition of the following paragraph:  “(h) government employees employed in terms of the Public Service Act, 1994 (Act No. 103 of 1994), the Employment Educators Act, 1998 (Act No. 76 of 1998) and the Municipal Systems Act, 2000 (Act No. 32 of 2000).” | This clause pertains to a direct conflict of interest in the public transport space. The blanket ban as proposed may lead to possible litigation. |
| 6 | 16 | 24(1) | It is proposed that section 24(1) be amended as follows:  By addition of the following paragraphs after paragraph (b) in section 24(1):  “(c) invite comments and complaints from interested parties, including the general public and take appropriate action in response thereto;  (e) advise the MEC on the treatment of all passengers using public”[transport], including targeted categories of passengers. | The Department agrees with the proposed additions.  The wording must reads as public transport. |
| 7 | General |  | The Eastern Cape is a vastly rural area. The conditions of the roads in some areas make it impossible for minibus taxis to operate. It is proposed that vans must be allowed to operate in those rural areas and be provided with operating licences. | This is allowed in terms of section 71 of the Principal Act. |
| 8 | General |  | The report of the Portfolio Committee attached hereto highlights a number of issues raised by the stakeholders. The issues raised by the stakeholders as reflected in the report ought to be given serious consideration by the Department of Transport. | The Department has considered the report and issues raised will be taken forward through the Department. |
| **Free State** | | | | |
| 9 | General |  | The Portfolio Committee on Public Works, Infrastructure, Roads, Transport and Human Settlement … vote in favour of the Bill with the following amendments: | The Department welcomes the support. |
| 10 | 3 and 5 | 8 and 10 | That there should be uniformity and consistency on regulations by the Minister and the MECs in different provinces | Comment noted. Regulations will be uniform and consistent. |
| 11 | General |  | That the powers given to taxi associations with regard to operating licences need to change | Comment does not specify how the powers should change. |
| 12 | General |  | That the Department must take responsibility in issuing licences | The principal Act allocates the operating licensing function to all spheres of government. |
| 13 | 7(b) | 11(1)(b)(viiB) | Scholar transport should also be issued licences to transport learners | Scholar transport requires licences in terms of section 50(1) of the principal Act. |
| 14 | --- | 87 | Any transport faring [sic] passengers illegally must be impounded | Already provided for in section 87 of the principal Act. |
| 15 | General |  | Operators that are using routes that are not allocated to them must pay a fine to stop violence in the taxi ranks | This is already covered in section 90 of the Principal Act. |
| 16 | --- | 52 | Taxi permits should be extended from 7 years to 15 years and or indefinitely | The Department disagrees. Operating licences should be for a maximum period of 7 years for planning and safety purposes. In most cases, renewal of those licences is automatic after lapsing anyway. |
| 17 | General |  | The Bill is supported by the community of the Free State | The Department welcomes the support. |
| **KwaZulu-Natal** | | | | |
| 18 | General |  | The Portfolio Committee on Transport … agreed to mandate the KwaZulu-Natal delegation to support the …. Bill with the following proposed amendments …. | The Department welcomes the support. |
| 19 | 1(c) | 1 | Definition of e-hailing services  The following 4 provisions be added to enforce and fortify the definition of e-hailing services as a separate and distinct category:   * “Available for hire of a vehicle and a driver for a journey at a charge arranged beforehand with the operator”; * “Neither the operator nor the driver charges the passengers individual fares; * “The person hiring the service has the right to decide the route, date and time of travel”; and * “The passengers are conveyed to a common destination, and includes vehicles hired with drivers contemplated in section 66A” | The Department disagrees. The proposed definition falls squarely within the definition of Charter services. See section 1 of the Principal Act. |
| 20 | 1(c) and 40 | 1 and 66A | The Definition of “e-hailing services” currently provided for in the Bill should be enhanced and reinforced to guard against ambiguity or misinterpretation. In order to avoid unintended consequences at the point of granting licences by Regulatory Entities, the Committee proposes that:   * E-hailing services are not restricted to areas of operation and dedicated routes as these are roaming services. * It is necessary to specifically define the appropriate and applicable application process and timeframe for the consideration and granting of operating licences for e-hailing service operators by regulatory entities. * That Regulatory Entities must be provided sufficient guidance by way of the appropriate legislative and regulatory framework to inform a consistent application and implementation thereof including applying the appropriate Guidelines as prescribed by the National Department of Transport as a practice note for all PREs and MREs. | This provision is adequately covered in Clause 40 of the Bill.  Application processes are already covered in the regulations and will be expanded in terms of the new section 8(1)(bbA).  The suggested practice note will be drafted by the Department. |
| 21 | 40 | 66A(1)(b) | Amendment of section 66A(1)(b)  “(b) The regulatory entity granting an operating licence for such service may specify, with regards to central business districts, highly congested areas or specific areas of public spaces [the area] for picking up of passengers, subject to section 57(5).” | This is within the discretion of the PRE under Clause 40 – new section 66A. |
| 22 | 40 | 66A(2) | Deletion of section 66A(2) | The Department is of the view that this provision should be retained. |
| 23 | 39(c) | 66(5) | A review and amendment of section 66(5) of the Bill is required due to backlogs at various municipalities in the issuance of operating licences | The relationship between section 66(5) and the backlogs is not understood. Comment noted as regards to backlogs. |
| 24 | 40 | 66A(1)(b) and (2) | **Limitation of areas or ranks specifications**   * Imposing pre-determined location requirements on e-hailing services defeats the protections offered by e-hailing platforms such as real-time tracking of every journey and access to an in-app “panic button”, among other things. * Limiting an e-hailing service provider to specific areas is a practical impossibility by the nature of the roaming service and the technology involved, as well as the consumers in the market it serves. | These provisions are adequately covered in Clause 40 of the Bill. |
| 25 | 40 | 66A(5)(b) | **Vehicle markings/branding**  E-hailing drivers are already targets for criminal and violent attacks. If there vehicles were marked, it would make them more obvious targets of attacks and the rate and volume of such occurrences would increase thereby equally endangering the lives of drivers and commuters.   * E-hailing vehicles are marked “digitally” since only approved drivers and vehicles are allowed to use the platform. * Once the driver and commuter are matched, the commuter knows which vehicle model and vehicle registration should be arriving at the specified location. * Metered taxis require physical markings in order to remain identifiable to prospective consumers when hailed from the street/rank. | The Department disagrees. It is a government policy that all public transport vehicles must be identifiable for law enforcement purposes. |
| 26 | ?? | ?? | The Committee proposes the addition of subsection 1A as follows:  “A Municipal Regulatory Entity or other regulatory entity must establish a process whereby interim licences are issued within 14 (fourteen) days which would be valid pending the final decision to be made by the Municipal Regulatory Entity referred to in subsection (1) where, for whatever reason, the decision to be taken referred to in subsection (1) has not yet been made after a week after the application for operating licence was received by the Municipal Regulatory Entity.” | This will be in conflict with PAJA. Furthermore, it will not be practical or possible for Regulatory Entities to adhere to these timelines. Experience has shown that the issuing of interim licences leads to abuses and is not advisable. |
| 27 | 40 | 66A(1) | Proposal that s66A(1)(b) be amended as follows:  “(b) The regulatory entity granting an operating licence for such service may specify with regard to central business districts, highly traffic congested areas or specific areas of public spaces [the area] for picking up of passengers, subject to section 57(5).” | This is already covered in the Bill. |
| 28 | 40 | 66A(2) | Proposal to repeal section 66A(2) | The Department is of the view that this provision should be retained. |
| 29 | 40 | 66A | Proposal that Section 66A is amended by the addition and insertion of the following subsections:  Electronic Hailing Services  66A(2) if the operating licence specifies the areas as envisaged in subsection (1)(b) such a vehicle may-  (c) leave the area or zone described in the operating licence if, on the return journey, it is to carry the same passengers that it carries on the outward journey or if the vehicle is to return empty; and  (d) Pick up passengers outside that area or zone if the fare is pre-booked and the passengers will return to such area. | This is already adequately covered in Clause 40 of the Bill – new section 66A. |
| 30 | 40 | 66A(5)(a) and (b) | Proposes an amendment to section 66A(5)(a) and (b) and insertion of subsections (9) to (12)  (5) Subject to subsection (9):  ….  (9) No regulation may be made unless the Minister or the MEC:  (a) has published:  (i) such draft regulation:  (ii) a statement explaining the need for and the intended operation of the regulation;  (iii) a statement of the expected impact of the regulation;  (iv) a notice inviting submissions in relation to the regulation and stating where, how and by when submissions are to be made; and  (b) has, once submissions referred to in paragraph (a)(iv) have been received and considered:  (i) a consultation report must be prepared which must include:  (aa) a general account of the issues raised in the submissions made during the consultation; and  (bb) a response to the issues raised in the submissions;  (ii) submitted the regulation and the consultation report to Parliament or the applicable provincial legislature (hereafter referred to as “the applicable legislature”) as the case may be, in terms of section 12.  (10) The period allowed for making submissions referred to in subsection (9)(a)(iv) must be at least six weeks.  (11) In deciding whether to make a regulation, the maker must take into account all submissions received by the expiry of the period referred to in subsection (10) and any deliberations of the applicable legislature.  (12) Before making a regulation in terms of subsection (5), the Minister or MEC, as the case may be, must submit the regulation to the applicable legislature, for a period of at least 30 days while the applicable legislature is in session, together with:  (a) the documents mentioned in subsection (9)(a); and  (b) a report on the consultation process referred to in subsection (9)(b)(i).” | This is adequately covered by section 8(2) of the principal Act. |
| 31 | 1(e) | 1 | Amendment of section 1 of Act 5 of 2009  The addition of the paragraph “as prescribed by the Minister under section 66(4)(cA), or is equipped with an electronic hailing application or similar technology that complies with requirements so prescribed, or both such meter and application or technology,” on the definition of Metered Taxi Services in Section 1(c). Already the definition states that a metered taxi is equipped with a sealed meter either a manual meter or a digital meter or similar technology, in good working order, for the purposes of determining the fare payable. | Comment noted. It is already covered in the Bill. |
| 32 | 1(c) | 1 | Definition  E-hail App – A software program residing on a smartphone which performs one or more of the following functions:  Allows a passenger to identify the location(s) of available Taxicabs in a given area and allows an operator to identify the location of a passenger who is ready to travel;  Allows a passenger to hail a Taxicab via the device;  Allows the Driver to receive a hail request from such a passenger if the application provides for connecting passengers to a Driver. | The Department disagrees that there is a need to define “E-hailing app”. The scope of the Bill is the service hence E-haling services is properly defined. |
| 33 | 1(c) | 1 | Ride hailing/e-hailing service – Computer definition. Transportation from an unlicensed taxi service such as Uber or Lyft. Also called a “ride-sharing” service, which is a misnomer when applied to single fare rides but accurate when referring to the carpool service that the companies offer. | Comment noted. |
| 34 | 39 | 66(1)(a), (b) | Proposes that:   1. the entity granting the operating licence may specify an area for picking up passengers and must provide a holding bay for vehicles; 2. if the operating licence or permit specifies such an area or zone, the vehicle may leave that area or zone if it has been allocated a trip automatically or manually;   An example is King Shaka International Airport where there is a Taxi Pick Up area regardless of the way it has been hailed. | Section 66(1)(a) of the principal Act already provides for this. |
| 35 | 39 | 66(1)(c) (d) | Proposes that the paragraph be put as follows:   1. the vehicle may pick up passengers outside that area when they enter into that particular area or zone, if the fare is pre-booked and the passengers will return to such area; and 2. any particular journey may be operated at a fare not determined by the meter if the fare for that journey has been agreed upon before the journey begins, but the meter will be kept running for the information of passengers. | Already covered in the principal Act. |
| 36 | 39(c) | 66(5) | Proposes that the paragraph be put as follows:  (5) analogy meter or digital meter or similar technology must-  (a) have the facility to estimate distances and fares, taking into account…. | There is no need to separate the two meters as they are the same and serve the same purpose. |
| 37 | --- | 5(5) | Proposes that the MEC and the Minister exercise their functions of fare collection and ticketing systems by also including players in the industry i.e. Operators and Service Providers | Comment noted for implementation. All relevant stakeholders will be involved. |
| 38 | 40 | 66A(1)(b) | Area restrictions  These provisions could be used to artificially restrict the area in which Uber driver-partner operators, and affect the overall level of service to the customer | The Department is of the view that this provision should be retained as the concerns are adequately covered in Clause 40 of the Bill. |
| 39 | 40 | 66A(5)(b) | Special markings  If the e-hailing vehicle is required to have special markings, drivers will be made even more vulnerable to attack. The customer (i.e. the passenger) can easily recognise the vehicle/s he has booked from the data on his/her smartphone. | The Department disagrees. It is government policy that all public transport vehicles must be identifiable for law enforcement purposes. |
| **Mpumalanga** | | | | |
| 40 | General |  | The Portfolio Committee on Public Works, Roads and Transport, Community Safety, Security and Liaison … confers on the permanent delegate … a mandate to vote in favour of the Bill without any proposed amendments … | The Department welcomes the comment. |
| **Northern Cape** | | | | |
| 41 | 48 | 84 | Clause 48 of the Bill is not clear in terms of whether accredited tourist transport operators can use more than one vehicle at the same time | The clause is clear enough. Tourist operators may use any number of compliant vehicles. |
| 42 | General | 18(5) | A toll-free number must be introduced to report bad driving, treatment and behaviour of drivers or operators | Section 18(5) of the principal Act provides that MREs must establish call centres. |
| 43 | General |  | The Bill is unanimously supported by the communities | The Department welcomes the support. |
| 44 | General |  | TransForum is advocating for e-hailing in the Province | Comment is noted |
| 45 | General |  | The safety of passengers including learners is not fully addressed | Clause 2 of the Bill amends section 5 of the principal Act to promote safety. Otherwise this is dealt with in the National Road Traffic Act 93 of 1996. |
| 46 | General |  | The Minister must expedite the issue of regulations to address the safety of passengers and pedestrians, especially in built up residential areas | Comment is noted. |
| 47 | General |  | The Committee recommends to the House to mandate the Permanent Delegates to … support the Bill | The Department welcomes the support. |
| **North West** | | | | |
| 48 | General |  | The Portfolio Committee on Public Works and Roads, Community Safety and Transport confers the delegation representing the North West Province with the authority to negotiate in favour of the … Bill | The Department welcomes the comment. |
| 49 | 40 | 66A(5)(b) | The proposed section 66A(5)(b) which provides that the Minister must make regulations prescribing special markings or other requirements for vehicles used for e-hailing services be amended to make it a discretion and not compulsory. The wording should be amended to read: The Minister may. | The Department agrees with this comment. |
| 50 | 40 | 66A(1)(b) | Section 66A(1)(b). Area restrictions . The provision be amended so that it does not restrict the area in which Uber driver-partner operates this affecting the level of service to the customers. | The Department is of the view that this provision should be retained as the concerns are adequately covered in Clause 40 of the Bill. |
| 51 | 1(a) | 1 | The definition of “association” in the bill be amended to define the composition of an association and the number of people required to form an associations. | The Department is of the view that the current definition of association is adequate. |
| 52 | ?? | ?? | As a job creation strategy: Section 7(c) be framed in a way that the employment of personnel in the Municipal Regulatory Entities that are to be established be biased to give preference to suitably qualified persons residing in those municipalities. | This is an implementation matter. |
| **Western Cape** | | | | |
| 53 | General |  | The Standing Committee on Transport and Public Works reports that it confers on the Western Cape’s Permanent Delegate in the NCOP the authority to support the Bill | The Department welcome the comment. |
| **Limpopo** | | | | |
| 54 | 1 | 1 | “Subsidise” we propose that the definition in the principal act be amended to specifically include passengers for the taxi industry | The Department disagrees. There is no need to differentiate between passengers of types of services. |
| 55 |  | 87 | 87(2) A vehicle impounded under subsection 1 must be delivered to the head of the depot as contemplated in subsection 4, who must retain the vehicle in the depot and release it to the person concerned only-   1. When the criminal charges against the person have been withdrawn or the person has been acquitted of the offence charged; or 2. In the case where the person is convicted of the offence charged, and unless the court has ordered otherwise on payment to the head of the depot of the amount determined by the **[MEC]** Minister, which is an impoundment fee.   We propose that the Minister be the one to determine impoundment fees to provide standardization of fees across the province | The Department is of the view that provinces must continue to determine their impoundment fees as this is a provincial function. |
| **Gauteng** | | | | |
| 56 | General |  | The Gauteng Provincial Legislature votes in favour of the Bill, with proposed amendments and mandate the Permanent Delegate to the NCOP to negotiate in favour of the Bill | The Department welcomes the support. |
| 57 | 22 | 41A | To delete the words **[three years]** and insert the words six months in section 41A(b) as follows:  “31A(1) A contracting authority may enter into a stopgap contract which-  …  (b) is a contract with a duration of not more than **[three years]** six months;” | The Department disagrees. Stopgap contracts will take time to be negotiated and concluded. Judging from past experience, a maximum period of six months will mean in most cases that the period will expire before the contract is properly implemented and could lead to wasted effort and costs. |
| 58 | 40 | 66A(2) | To delete section 66A(2) | The Department is of the view that this provision should be retained. |
| 59 | 40 | 66A(5)(b) | The implementation of these regulations pertaining to special markings should be suspended pending resolution of the targeted attacks directed at e-hailing drivers. | Comment noted. Clause 53 – new section 93A(1) - will empower the Minister to delay the implementation of provisions of the Act where appropriate. |
| 60 | 13(a) | 20(1) | Non-executive members should be defined.  It is not clear what constitutes a “non-executive member” under clause [subsection] 13(1A). In Boards a non-executive director is a director who is not full-time. If the non-executive member is not a full-time member, then subsection (2) contradicts subsection (1A) as it provides that the non-executive members may be appointed on a full time basis. | It is not necessary to define this term. A non-executive member is a member who is not involved in the management and administration of the entity. A non-executive member may be either full time or part time. There is no contradiction. |
| 61 | 15(a) | 23(2) | Clarify who is a non-executive member  Subsection (2E) makes it plain that members of a Provincial Regulatory Entity are non-executive members responsible for finance. Subsection (2A) therefore contradicts subsection (2E). | There is no contradiction. |
| 62 | 21 | 41 | * Section 41 is inconsistent with sections 217 of the Constitution and 38(1)(a)(iii) of the Public Finance Management Act (PFMA) which requires the state to procure goods and services through a tender process; * Regulation 16.A6.4 of the Treasury Regulations read with the Treasury Practice note defines circumstances in which one may deviate from tender process. * It is clear that one may deviate from the tender process in case of emergency or where there is only one supplier who can provide the goods or services; * The reasons for the deviation must be recorded and approved by the Accounting Officer which must show why it was impossible to ask for competitive bids; * Section 41 is also inconsistent with section 112(1) of the Municipal Finance Management Act. Section 3(2) provides that in case of inconsistency with any other legislation the Municipal Finance Management Act prevails. | The provision for negotiated contracts is justified in order to establish new networks involving incumbent operators, to promote economic empowerment of small business and to facilitate restructuring of parastatal entities – see section 41(1) of the principal Act. They will also ensure that passengers are not left stranded without transport while new contracting arrangements are put in place. The State Law Adviser has certified the provisions of the Bill as consistent with the Constitution. |
| 69 | 32(a) | 54(2) | There must be clarify as to what will happen if there is no Municipal Regulatory Entity whereas the proposed subsection (2) makes it peremptory that an application must be made to a Municipal Regulatory Entity. | The provision presupposes that an MRE must exist for it to apply. |
| 70 | 35(b) | 59(1) | The publication for an application of an operating licence is an expensive exercise. It is proposed that it is not necessary to publish applications for renewals under subsection (1). | The Bill provides specifically that renewal applications need not be published. Application for renewals are also exempted in terms of Regulation 17. |
| 71 | 36(c) | 60(10) | The power to delegate in the proposed section 60(10) must not be overbroad but should rather be clearly circumscribed. | Comment noted. The Department is of the view that the provision is adequate as is. |
| 72 | 54 | -- | On the day the Act comes into force, new applicants will be able to apply for an e-hailing Operating Licence. However, there will be many partner-drivers who hold an existing Operating Licence issued for one of the categories under the current principal Act (metered taxi or charter service) have an application which has been submitted but where a decision has not yet been made. It would be unfair and improper for either category to be required to submit new applications.  The Bill must make clear provision for these situations. | The new section 8(1)(bbA) will empower the Minister to make regulations to cater for these types of administrative arrangements. The comment is noted for purposes of the regulations. |
| 73 | General |  | The Bills should include a requirements that Regulatory Entities must, within 60 days of receipt of a fully compliant and complete application, finalise their decision on the application and communicate the decision to the applicant. | This is currently provided for in the regulations. The Department’s view is that it will be more appropriate to retain it in the regulations. |