

**PROPOSED AMENDMENTS TO
ECONOMIC REGULATION OF TRANSPORT BILL
[B01-2020]**

CLAUSE 1

1. On page 6, from line 11 to 12, after “facility” to omit “of an infrastructure or resource owner”.
2. On page 6, in line 37, before” means”, to insert “in respect of this Act”.
3. On page 7, in line 7, after “place” to insert “or platform”.
4. On page 7, after line 13, to insert the following definition:
“National Land Transport Act” means the National Land Transport Act, 2009 (Act No. 5 of 2009);”.
5. On page 7, after line 22, to insert the following definition:
“President” means the President of the Republic of South Africa;”
6. On page 7, in line 27, after “(a)” to insert “which is”.
7. On page 7, after line 33, to insert the following definitions:

“**PAIA**” means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

“**POPIA**” means the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);”.

8. On page 7, in line 61, after “transport” to insert “and infrastructure”.

CLAUSE 2

1. On page 8, in line 12, to omit “, 1999”.

2. On page 8, in line 13, to omit “, 1999”.

3. On page 8, after line 16, to insert the following subsection:

“(5) The access, protection, processing and dissemination of information, including personal and confidential information, must be done in a manner consistent with and in accordance with POPIA and PAIA.”.

CLAUSE 4

1. On page 9, after line 40, to insert the following subsections:

“(11) (1) The Minister may, in consultation with the Regulator, from time-to-time, by notice in the *Gazette*, declare that any other regulators, in no particular order, are consolidated into the Regulator—

(a) including the following regulators, but not limited to:

- (i) Cross-Border Road Transport Agency;
 - (ii) National Public Transport Regulator;
 - (iii) Air Service Licensing Council;
 - (iv) International Air Services Council; and
 - (v) any other regulator.
- (b) if the Minister has determined that that one or more of the regulators referred to in subsection (1) must be incorporated, the Department must produce a report from conducting a review of their performance and capabilities, including the initiation of the legislative reform required to facilitate the incorporation of these regulators within three years from the effective date and from time-to time, thereafter.

(2) Before the Minister may consider making a determination contemplated in subsection (1), the Department, in the prescribed manner and form—

- (a) must publish the relevant report contemplated in 11(1)(b) in the *Gazette*, within the prescribed period;
- (b) may conduct public hearings on the matter in appropriate circumstances; and
- (c) must publish, in the *Gazette*, a notice that such a determination is being considered, and invite public submissions in response to the notice.”.

CLAUSE 6

1. On page 10, in line 9, after “prescribe” to insert “reasonable”.

CLAUSE 10

1. On page 11, from line 20 to omit section 10 and to substitute the following section:

“**10.** An entity that has been granted access approval in terms of Section 9(1) or (2), may cede or transfer any or all of its access rights to a third party, on condition that—

- (a) the entity must first notify the infrastructure owner and the Regulator of its intention to cede or transfer access rights;
- (b) the entity ensures that all its obligations remain fulfilled; and
- (c) third parties may not cede or transfer such access rights to any operator.”.

CLAUSE 11

1. On page 12, from line 34 to omit paragraph (b) and to substitute the following paragraph:

“(b) set service standards and a price rebate mechanism if such service standards are not met in respect of any activity that is subject to the price control; or.”.

2. On page 12, in line 41, after “price”, to insert “control”.

CLAUSE 16

1. On page 14, in line 34, to omit “must” and to substitute “may”.

CLAUSE 30

1. On page 19, in line 9, after “Within” to omit “20” and to substitute “30”.

CLAUSE 38

1. On page 23, in line 4, after “appropriate”, to insert “, adequate and efficient”.

CLAUSE 42

1. On page 24, after line 26, insert the following subsection:

“(3) Any request for research made to the Regulator must be considered on the merits of its reasonableness and benefits to the industry, after which funding arrangements will be made by the Regulator and other interested parties as may be necessary.”

CLAUSE 47

1. On page 26, in line 32, after “Minister”, to insert “in accordance with the procedure set out in subsections (3) and (4)”.
2. On page 26, in line 35, after “subsection” to omit “(3)” and to substitute “(5)”.
3. On page 26, after line 35, to insert the following subsections:

“(3) The Minister must forward the nominations received, to the relevant Portfolio Committee in the National Assembly, who must in a consensus seeking manner—

- (a) compile a short list of at least nine candidates;
- (b) interview, in a public and transparent manner, each of the candidates whose names appear on the shortlist;
- (c) consult with the relevant Select Committee in the National Council of Provinces; and
- (d) compile and forward to the Minister a final short list, provided that no final short list of more than 11 candidates is compiled.

(4) The Minister, after consultation with the relevant Portfolio Committee, must appoint the members of the Council from the persons whose names appear on the final short list contemplated to in subsection (3)(d).”.

4. On page 26, in line 36, to omit “(3)” and to substitute “(5)”.
5. On page 26, in line 39, to omit “(4)” and to substitute “(6)”.
6. On page 26, in line 42, to omit “(5)” and to substitute “(7)”.
7. On page 26, in line 43, after “subsection” to omit “(6)” and to substitute “(8)”.
8. On page 26, in line 44, to omit “(6)” and to substitute “(8)”.

9. On page 26, in line 50, to omit "(7)" and to substitute "(9)".
10. On page 26, in line 51, to omit "(8)" and to substitute "(10)".
11. On page 26, in line 52, to omit "(8)" and to substitute "(10)".
12. On page 27, in line 1, to omit "(9)" and to substitute "(11)".
13. On page 27, in line 2, after "subsection" to omit "(4)" and to substitute "(6)".
14. On page 27, in line 3, to omit "(10)" and to substitute "(12)".
15. On page 27, in line 5, to omit "(11)" and to substitute "(13)".
16. On page 27, in line 8, to omit "(12)" and to substitute "(14)".
17. On page 27, in line 10, after "subsection" to omit "(4)" and to substitute "(6)".
18. On page 27, in line 14, after "subsection" to omit "(11)" and to substitute "(13)".
19. On page 27, in line 16, to omit "(13)" and to substitute "(15)".

CLAUSE 50

1. On page 28, from lines 19 to 20, to omit “, 1999 (Act No. 1 of 1999),”

CLAUSE 53

1. On page 29, from lines 15 to 16, to omit “, 1999 (Act No. 1 of 1999)”

CLAUSE 54

1. On page 29, in line 34, to omit “or must”.

CLAUSE 56

1. On page 30, in line 26, to insert a new subsection (1) as follows:
“(1) At any time during an investigation, but prior to the issuing of a subpoena contemplated in subsection (2), an inspector or investigator must afford the person being investigated an opportunity to participate in a voluntary inspection”.
2. On page 30, in line 27, after “Chief Executive Officer” to insert “, the Regulator”.

CLAUSE 64

1. On page 33, in line 41, to omit “calculated”.

2. On page 33, in line 43, to omit "connection with an" and to substitute with "obstruction of an".
3. On page 33, in line 49, after "of section" to substitute "53" with "55".

SCHEDULE 1

1. On page 36, from lines 8 to 10, to underline the following words:
"Transport Economic Regulator established by section 29 of the Economic Regulation of Transport Act, 2022".
2. On page 36, in line 16, after "46." to insert "[**(1)**"]
3. On page 36, from lines 18 to 19, to underline the following words:
"prescribed in terms of the Economic Regulation of Transport Act, 2022".
4. On page 36, from lines 26 to 28, to underline subsection (1).
5. On page 36, from lines 31 to 34, to underline subsection (2).
6. On page 36, in line 40, to omit "—" and to substitute the "—".
7. On page 36, from lines 41 to 46, to underline paragraphs (a) and (b).

8. On page 36, in line 45 to omit “20” and to substitute “30”.
9. On page 36, from lines 48 to 50, to underline subsection (2A).
10. On page 36, in line 49 to omit “20” and to substitute “30”.
11. On page 36, from lines 52 to 55 and on page 37 from lines 1 to 9, to underline subsections (6),(7) and (8).
12. On page 37, from lines 12 to 21 to underline subsections (6A) and (6B).
13. On page 37, from lines 24 to 26, to underline subsection (6).
14. On page 37, from lines 30 to 32 to omit subsection (1) and to substitute the following subsection:

“(1) The Regulator—
Must prepare a proposed price control for approval by the Regulator in
terms of the Economic Regulation of Transport Act, 2022.”.
15. On page 37, from lines 38 to 40, to underline the following words:

“the Transport Economic Regulator established by section 29 of the Economic
Regulation of Transport Act, 2022”.
16. On page 37, from lines 45 to 50, to underline subsection (1).

17. On page 37, from lines 52 to 54, to underline subsection (1A).

18. On page 37, from line 58 to page 38 from line 1 to omit clause (1) and to substitute the following clause:

“(1) Section 1 of the Airports Company Act, 1993 (Act No. 44 of 1993) is hereby amended by—

(a) by the deletion of the definition of “Committee”; and

(b) by the insertion after the definition of “permission” to insert the following definition:

“‘**Regulator**’ means the Transport Economic Regulator established by section 29 of the Economic Regulation of Transport Act, 2022”.

19. On page 38, from lines 9 to 11, to underline the following words:

“except in accordance with a price control approved and published in terms of the Economic Regulation of Transport Act, 2022”.

20. On page 38, in line 20 to substitute “Minister” with “Regulator”.

21. On page 38, from lines 28 to omit paragraph (b) and to substitute the following paragraph:

“(b) [make recommendations to the Minister] may request advice from the Transport Economic Regulator, in terms of the Economic

Regulation of Transport Act, 2022, regarding any action [which he] that the Minister may take in terms of subsection (3) or (4).”.

22. On page 38, from lines 36 to 38, to underline the following words:
“file a complaint with the Transport Economic Regulator in terms of section 16 of the Economic Regulation of Transport Act, 2022”.

23. On page 38, from lines 42 to 47, to omit clause (1) and to substitute the following clause:

“(1) Section 1 of the Air Traffic and Navigations Services Company Act, 1993 (Act No. 45 of 1993) is hereby amended by—

- (a) the deletion of the definition of “Committee”; and
- (b) the insertion after the definition of “permission” to insert the following definition:

“‘Regulator’ means the Transport Economic Regulator established by section 29 of the Economic Regulation of Transport Act, 2022;”

24. On page 38, from lines 52 to 54, to underline the following words:
“except in accordance with a price control approved and published in terms of the Economic Regulation of Transport Act, 2022.”.

25. On page 38, from lines 58 to 61, and on page 39, from lines 1-3, to omit subsection (1) and to substitute with the following subsection:

“(1) If the company has indicated in a business plan contemplated in section (7) that it intends to close or sell any air navigation infrastructure mentioned in section 6(1)(a) or to terminate or substantially curtail an air traffic service or air navigation service which was rendered by the State or any person on behalf of the State immediately prior to the transfer date, the company shall at the same time as it submits such business plan to the Shareholding Minister in terms of section 7, submit a copy thereof to the [Committee] Minister.”.

26. On page 39, from lines 10 to 13, to omit paragraph (b) and to substitute the following paragraph:

“(b) **[make recommendations to the Minister]** may request advice from the Transport Economic Regulator, in terms of the Economic Regulation of Transport Act, 2022, regarding any action [which he] that the Minister may take in terms of subsection (3) or (4)”.

27. On page 39, from lines 17 to 21, omit subsection (1) and to substitute the following subsection:

“(1) Any person who feels aggrieved by the failure of the company to comply with any provision of section 5(2) or 11(1) [or (12)] may [lodge with the Committee a complaint, which shall be accompanied by proof of the failure] file a complaint with the Transport Economic Regulator in terms of section 16 of the Economic Regulation of Transport Act, 2022.”.

28. On page 39, from lines 33 to 35, to omit paragraph (a) and to substitute the following paragraph:

“(a) is determined by the **[Minister]** Transport Economic Regulator in terms of Part A of Chapter 3 of the Economic Regulation of Transport Act, 2022, on the recommendation of the Agency;”.

29. On page 39, from lines 41 to 45, to underline subsection (5).

30. On page 39, in line 26, after “4.”, to insert “(1)”.

31. On page 39, after line 27 to insert the following item:

“(2) Section 21 of the National Land Transport Act, 2009 (Act No. 5 of 2009) is hereby amended by the substitution in subsection (1), for the words preceding paragraph (a), of the following words:

“(1) Subject to the provisions of the Municipal Fiscal Powers and Functions Act, 2007 (Act No. 12 of 2007), other relevant legislation and subject to any price controls determined by the Transport Economic Regulator established by section 29 of the Economic Regulation of Transport Act, 2022, a municipality, which has established a Municipal Land Transport Fund in terms of section 27 of the National Land Transport, 2009 (Act No. 5 of 2009) may impose user charges, which may differ from case to case, on—”.

SCHEDULE 2

33. On page 41, from lines 55 to 56, to omit the words “, except any assets excluded by the Minister,”.