**Report of the Portfolio Committee on Transport on the President’s reservations on the National Land Transport Amendment Bill [B 7D – 2016] (National Assembly – sec 76), dated 20 September 2022**

The Portfolio Committee on Transport, having considered the National Land Transport Amendment Bill [B 7D – 2016], (tagged as a Section 76 Bill), to address the President’s reservations on the constitutionality thereof, reports as follows:

1. **Introduction**

On 23 September 2021 a letter from the President, Mr M C Ramaphosa, to the Speaker, Ms N Maphisa-Nqakula, MP, concerning his reservations on the constitutionality of the National Land Transport Amendment Bill, 2016 [B7- 2016], (“Bill”) was referred to the Portfolio Committee (the “Committee”) for consideration and report. This was done in terms of section 79(1) of the Constitution of the Republic of South Africa, 1996, (“Constitution”). The Bill was passed by the National Assembly on 9 March 2020 and thereafter sent to the President for assent.

1. **The President’s reservations**

Clause 7 amends section 11 of the Act to provide that municipalities may enter into new contracts for public transport services only where they meet criteria that will be prescribed by the Minister in consultation with the Minister responsible for local government matters. Provisions have also been inserted to empower provinces to intervene, and if necessary enter into the contracts themselves, where municipalities do not comply with the prescribed requirements or criteria.

The President’s reservations are summarized as the following:

2.1 Clause 7(a) - appears to confer on national government the power to conclude a wide range of contracts concerned -irrespective of whether they are national in scope, provincial in scope or merely local in scope. If this is so, then clause 7(a) appears to be in conflict with the principle that national and provincial governments are not generally permitted, via legislation, to assume the local government functions for themselves.

2.2 Clause 7(b) - appears to allow provinces themselves to conclude the relevant public transport contracts with operators, which appears to be in conflict with the principle that national and provincial governments are not generally permitted, via legislation, to assume the local government functions for themselves.

2.3 Clause 7(h) and (m): the power in (h) is made subject to the new section 11(6).

2.4 The President is raising reservations about the constitutionality of the new section 11(6). Section 11(6) deletes the provision that would allow for the function to be assigned by the Minister and instead vests the contracting authority automatically in the province. The President has reservations that this is inconsistent with the Constitution and the principle that national and provincial governments are not permitted, via legislation, to assume the local government functions for themselves.

2.5 Clause 7(i) is part of the package of amendments that the Bill makes to the division of responsibilities between national, provincial and local government.

2.6 Clause 7(j), (k) and (l): It is not clear whether the intent and effect of clauses 7(j) to (I) of the Bill is to preclude the assignment powers contemplated in section 156(4) of the Constitution if that were to be their effect, that would appear to be unconstitutional.

1. **Committee engagements on the President’s reservations**

The Parliamentary Legal Adviser briefed the Committee on the legal opinion on the President’s reservations in respect of clause 7 of the Bill on 16 November 2021. The Committee was advised to consult with the Department on the implications of the reservations, i.e. there may be a lack of public transport in a municipality because that municipality does not have the capacity / resources to manage such transport contracts and routes and the Department’s proposed policy in this regard. In a meeting with the Committee on 22 February 2022, the Department was of the view that the Bill could be amended to address the President’s reservations, and outlined the recommended amendments to the Bill as follows:

**Clause 7(a) – granting of contracting powers to the national sphere of government**Schedule 4, Parts A and B to the Constitution allocates the function of public transport to all 3 spheres (national and provincial government have concurrent powers and local government has powers over municipal public transport). To grant the power to contract for public transport services to national does not take it away from the local sphere. However, to allay the concerns it was suggested that the Bill be amended to make the national powers subject to the contracts having to be concluded in agreement with the relevant provinces and municipalities. If the parties cannot agree the Intergovernmental Relations Framework Act 2005 (IGRFA) should be applied and if the matter is still not resolved the national sphere (Department) should be able to proceed to ensure adequate public transport to users.

**Clause 7(b) – granting of contracting powers to the provincial sphere of government**

The Department proposed that the requirement for municipalities to have to meet requirements and criteria to be prescribed by the Minister before they may contract, should be removed due to the concerns expressed. As provinces also enjoy powers over public transport in terms of the Constitution, clause 7(b) should be retained, but made subject to the requirement that provincial powers to contract only be exercised where the relevant municipality or municipalities are not in the process of contracting for services, in order to ensure the provision of services to users, and where appropriate in terms of an agreement concluded in terms of section 12(1) of the principal Act.

**Clause 7(h) – municipalities may only contract if they meet the requirements and criteria prescribed by the Minister, and subject to the amended section 11(6) and the new section 11(9)**

The Department agreed that the proposed proviso to section 11(1)(c)(xxvi) be deleted, as well as the proposed amendments to section 11(6). This would mean that the principal Act provisions about assigning the contracting function to municipalities would remain. The new section 11(9) would be amended accordingly as a consequential amendment.

**Clause 7(i) – exemption from the proviso to section 11(1)(c)(xxvi)**

Clause 7(i) should be deleted as a consequential amendment, as the proviso to section 11(1)(c)(xxi) would be deleted.

**Clause 7(j) – assignment of the contracting function**

Clause 7(j) should be deleted as the assignment of the function would be retained due to the fact that the provision for municipalities to meet prescribed requirements and criteria would be deleted.

**Clause 7(k) – assignment of the contracting function**

The Department agreed that clause 7(k) should be deleted.

**Clause 7(l) – assignment of contracting function**

Clause 7(l) should be deleted as the assignment of the function would be retained.

**Clause 7(m) – provinces acting as contracting authority for contracts concluded under the Transition Act**

The Department agreed that clause 7(m) should be deleted to leave section 11(6) of the principal Act as it is.

The Committee considered and deliberated on the proposed amendments to the Bill on 31 May 2022 to address the President’s reservations related to clause 7 and the constitutionality thereof.

1. **Recommendation**

The Portfolio Committee on Transport, having considered the subject of the National Land Transport Amendment Bill [B 7D – 2016] (National Assembly – sec 76), referred to it after certain reservations raised by the President in terms of section 79(1) of the Constitution, recommends that the House adopts this report and approve the National Land Transport Amendment Bill [B 7E – 2016].

Report to be considered.