
17 July 2023

Chairperson of the Select Committee on Transport
Honourable Mr Kenneth Mosimanegare Mmoiemang
Parliament of the Republic of South Africa
Parliament Street
Cape Town
8000

Dear Honourable Chairperson

SUBMISSION OF WRITTEN COMMENTS BY THE SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION (SALGA) TO THE SELECT COMMITTEE ON TRANSPORT, PUBLIC SERVICE AND ADMINISTRATION, PUBLIC WORKS AND INFRASTRUCTURE REGARDING SECTION 5(6) OF THE NLTA IN RESPONSE TO CALL FOR WRITTEN COMMENTS ON THE NATIONAL LAND TRANSPORT AMENDMENT BILL [B7-2016] (THE “BILL”)

1. INTRODUCTION

- 1.1. SALGA appreciates the opportunity that has been afforded by the Select Committee to make both written and verbal input into process of considering the National Land Transport Amendment Bill.
- 1.2. During the oral submission by SALGA, the Select Committee expressed reservations about including in the Amendment Bill, parts of the Principal Act that are not part of the Bill or the reservations of the President. SALGA requested an opportunity to make further input to the Committee regarding Section 5(4) and Section 5(6) of the Principal Act.

2. INTERPRETATION OF THE JOINT RULES OF THE PARLIAMENT

2.1. Part 8 of the Joint Rules of Parliament deals with Bills referred back by the President. Section 209 (2) (a) instructs that the Council Committee “*must consider, and confine itself to, the President’s reservations*”. In this instance, it is SALGA’s considered view that the Rules do not only specifically refer to the Clauses of the Bill that the President refers to, if interpreted in a broad sense. The rules acknowledge that the President’s reservations might have implications on other clauses not specifically mentioned by the President. This will still be confined to the President’s reservations and ensuring that the concerns of the President are fully addressed. The word “reservations” is more around the theme or subject than just the exactness of clauses¹.

2.2. In this instance, the reservations of the President are essentially about the constitutionality of the Bill with specific reference to powers that the Bill affords the Minister of Transport. Although generally, the reservations have been removed or amended on the version of the Bill before the Committee, there are other parts of the principal Act that nullify the removal of these clauses on the Bill by still affording the Minister of Transport unconstitutional powers to intervene in municipal affairs. Section 139 of the Constitution does not allow the Minister of Transport to instruct a municipal council on what to do.

2.3. The Rules of the NCoP regarding functions of the Committees state the following:

Section 177(1) (b) “*if it is a Bill amending provisions of an Act, may seek the permission of the Council to enquire into amending other provisions of that Act*”;

Section 177(1) (j) “*may in accordance with provincial mandates, recommend approval or rejection of the Bill or present an amendment Bill*”;

Whilst generally, the idea is to confine the dealing with a remitted Bill within the reservations of the President, there is a provision for Committee to request permission of the Council to deal with other provisions of that Act. Indeed

¹ In any event, there is no Bill without clauses nor any part of a Bill that does not belong to a clause. If the intention of the Houses was to focus on Clauses, they would have specifically mentioned this in the Rules. As a result, the word “reservations” cannot mean specific clauses rather a specific area or theme.

Section 185(3) of the Joint Rules allows Houses to deal with amended Bills according to their own rules. Surely, the remittance of a Bill by the President does not exclude the Houses utilising their own rules to engage with the President's concerns. Indeed, the Section 5(6) relates to the powers afforded to the Minister to intervene in a municipality in a manner SALGA considers to be unconstitutional. As a result, nothing both in the Joint Rules of Parliament and the rules of the NCoP prohibits the NCoP from considering amendment of the Bill to include Section 5(6) of the Principal Act by excluding the power of the Minister to intervene on municipal matters.

- 2.4. If Section 5(6) remains in the principal Act, then the objective of the President to have National Land Transport legislation that is constitutional is not met. The continued presence of Section 5(6) as is still allows the Minister to instruct municipalities on what to do which is the practice the President sought to address with his reservations. A narrow reading of the Rules will hollow out the reservations of the President.
- 2.5. The role of the NCoP is to make legislation in the most responsible manner without putting undue burden on other state institutions to find alternative mechanisms. SALGA is a state institution formed according to both the Constitution and legislation. SALGA is represented in the NCoP and should not be directed by the same House to find resolution on matters of local governance through the Judicial System on a constitutional matter that the NCoP has the necessary powers to amend.
- 2.6. The use of the word "ensure" in Section 5(4)(i) is challenging considering that the Constitution gives municipalities exclusive functions on municipal public transport. The point being that the Minister cannot ensure integration over functions that are an exclusive responsibility of another sphere of government. The wording "promote", "encouraged" has been used elsewhere in both the Principal Act and the Amendment Bill. Why not continue with this wording instead of saying "ensure"? Shouldn't the responsibility be placed by the legislation on other spheres of government to integrate than to give powers to the Minister to ensure? This clearly has Constitutional implications.

2.7. As indicated in the submission, Section 11(8), Section 11(10) and Section 14(7) of the Bill are depended on Section 5(6) of the Act. As a result, in practice the Bill or the envisaged National Land Transport Amendment Act will not function in isolation from the Principal Act. The strict view that the Committee must only consider the clauses mentioned by the President and not the theme of the issues on constitutionality is not in line with the practical functioning of the Act (including the envisaged Amendment Act) and is unhelpful.

2.8. Section 5(6) is also not aligned with the view expressed by the President regarding the application of both Section 139 and Section 154 of the Constitution. In a SONA 2020 the President made the following statement:

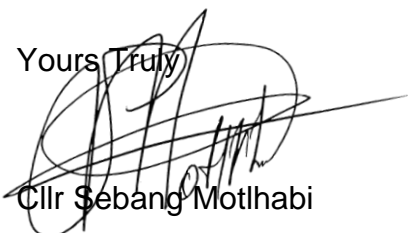
“Provincial and national government will re-double their efforts to support and strengthen the capacity of municipalities as required by Section 154 of the Constitution and provide for the monitoring and support of municipalities. It is only when the structured support has failed that the provincial executive or national government² will invoke a Section 139 intervention in strengthening local government.”

The current intervention as indicated in Section 5(6) is not premised and dependent on a structured support first and when this fails then the intervention. In this context, Section 5(6) might also not be according to the relationship between Sections 100 and 154 of the Constitution.

3. RECOMMENDATIONS

The Select Committee is requested to view the proposed amendment of Section 5(4) and 5(6) as within an allowed spectrum based on the reading of both the Joint Rules and the Rules of the NCoP.

Yours Truly



Cllr Sebang Motlhabi

Chairperson of the National Working Group on Roads and Transport

² This is probably included because Section 139 of the Constitution allows the Minister of Finance to intervene on financial matters.

