



The Director General
Department of Transport
Private Bag X193
PRETORIA
0001

For attention: Mr Muzi Simelane
BY FAX: (012) 323 9370
AND BY EMAIL: SimelanM@dot.gov.za

Dear Mr Simelane

TRANSNET'S COMMENTS ON THE DRAFT NATIONAL LAND TRANSPORT BILL

We refer to the draft National Land Transport Bill ("the Bill") published in Government Gazette No. 30928 on 01 April 2008 under Notice 424 of 2008, inviting comments to be submitted to the Department of Transport ("DOT") by 30th April 2008. This letter sets out Transnet Limited ("Transnet") comments on the Bill.

We refer also to our recent correspondence on this matter, dated 09th April 2008 and 10th April 2008, copies of which are attached hereto for ease of reference. We would like to take this opportunity to thank you for DOT's speedy clarification of the queries raised in our letter dated 09th April 2008. It is with reference to your reply of 10th April 2008, that our comments and proposals set out below are made; most specifically DOT's confirmation that rail freight and port terminals are not intended to be included in the scope of the Bill. In making our comments, we assume by the same token, that it is DOT's intention to also exclude pipeline transport from the ambit of the Bill.

Definition of "land transport"

In Chapter 1, section 1, the definition of "land transport" has the effect of including rail freight and port terminals in the scope of the Bill. The definition could be read to also include the transportation of goods via pipeline. If this is indeed not the DOT's intention, we respectfully submit that this definition should be changed appropriately. Our recommendation is that the definition of "land transport" be amended, and that a new definition for "port limits" be added, as follows (our proposed insertions are underlined):

"land transport" means the movement of persons and goods on or across land by means of any conveyance, and through the use of any infrastructure and facilities in connection therewith, but excluding –

- (a) the movement of goods by rail that is not incidental to a public transport service;
- (b) the movement of goods by pipeline; and
- (c) the movement of goods within port limits;"

"port limits" means port limits defined by the Minister in the Regulations to the National Ports Act, Act No. 12 of 2005.

If these amendments are adopted, the following consequential amendments would give expression to the DOT's stated intention to exclude freight rail and port terminals from the ambit of the Bill (our proposed insertions are underlined, and our proposed deletions are struck through):

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Group Company Secretary: Z Stephen

Clause 1

"travel demand management" means... the capacity of the land transport system...;

Clause 5

(3) The Minister takes responsibility for... regarding land transport between the Republic...

(4)

(e) co-ordinate land transport matters between the three spheres...

(j) promote effective integrated land transport planning.

(6) Where the Minister is of the opinion that... in relation to land transport matters...

Clause 7

(1)(Note that the paragraph numbering is inconsistent – this refers to the second (c))

(c) procedures for the regulation of interprovincial land transport;

(o) principles for land transport planning;

(p) the content of land transport plans;

(q) procedures for the preparation, updating and approval of land transport plans;

(r) procedures to be followed in promoting public participation in the land transport planning process;

Clause 9

(2)

(d) produce an annual report on the state of land transport affairs in the province...;

(g) strive to ensure that... impact on land transport in the province...;

(j) co-ordinate land transport initiatives...

Clause 10

(4)

(b) on the establishment, membership... for land transport planning in the province;

(f) procedures to be followed... in the land transport planning process.

Clause 11

(2)(a)

(ii) for overall strategic land transport planning and co-ordination...;

(v) to liaise with other government departments... impact on land transport issues...;

(viii) to co-ordinate land transport relations between the Republic and other countries..; and

(b)

(ii) for more detailed land transport planning and co-ordination in the provincial sphere...;

(iv) to liaise with other government departments... impact on land transport issues...;

(c) the municipal sphere of government is responsible for municipal land transport functions... primary responsibility to-

(ii) integrate municipal land transport planning with land use planning.

Clause 14

(1) Every planning authority... representatives of passenger rail operators, other public transport modes...

Clause 16

(1) A transport authority must... improving land transport service delivery... by grouping land transport functions...

(3) Every municipality must have regard to... established for land transport moving within...

Clause 19

(3) Subject to... their interest in land transport matters...

Clause 20

(1)

(b) in relation to the functions contemplated in paragraph (a), include... and other passenger rail-related functions...;

(e) manage the movement of persons and goods ~~on~~ within the land transport system by co-ordinating such movement;

- (f) encourage and promote ... to enhance the effectiveness of the land transport system...;
- (i) encourage, promote and facilitate public consultation,... labour and land transport operators,...;
- (u) develop and manage intelligent land transport systems...

Clause 28

- (1)
- (b) to receive and decide... for intraprovincial land transport in areas...

Clause 30

- (4) Such a DPA must arrange or, if necessary.... managing and funding land transport matters...

"CHAPTER 4

LAND TRANSPORT PLANNING

General principles for land transport planning..."

Clause 44

- (2) The PLTF must provide a land transport framework as an overall guide to land transport planning within the province...

Clause 45

- (1) All planning authorities must prepare and submit ... (ITPs) for land transport within their respective areas...
- (3) All ITPs must include routes for the transporting of dangerous goods on roads through their areas.
- (4)
- (d) provincial policies and principles regarding land transport across the boundaries...;
- (e) modes and aspects of land transport under the control of...;
- (g) any other matter regarding land transport provided for in provincial laws.

In addition to the above-mentioned amendments arising from the definition of "land transport", we would also submit the following comments:

Ad clause 36

There appears to be a disjuncture between the heading of clause 36 and its content. Whilst the heading indicates the subject matter to be "public transport user charges" (which suggests user charges related to passenger services – cf. the definition of "public transport service"), the content does not appear to limit the imposition of user charges to passenger services (cf. the very wide reference to "that generate traffic" and "goods" in (b) and (e) of subclause (1), respectively).

The open-ended wording of paragraph (b) of subclause (1) would have far-reaching implications if a DPA could impose user charges on all Transnet's land, buildings and other developments that "generate traffic". Transnet is a bulk freight transport company and most of its land, buildings and other developments (such as the petroleum pipeline or breakwaters in ports) by necessity generate traffic. This would equally apply to the areas envisaged in paragraph (e) of subclause (1), which would include all ports and freight depots owned by Transnet.

DOT is requested to reconsider the ambit of this clause, since the present wording would appear to be in conflict with the DOT's intention to exclude rail freight and port terminals - and we assume, pipeline transport - from the ambit of the Bill.

We submit further, that consideration be given to the constitutional implications flowing from this clause. Apart from the fact that it may make the Bill a so-called "mixed Bill" (requiring processing in terms of both section 75 and section 76 of the Constitution), it may be argued that this clause renders the Bill a money Bill as envisaged by section 77 of the Constitution. In addition, since most of the DPA's are municipalities, the imposition of user charges by municipalities may be challenged under

section 229(2) of the Constitution as being materially and unreasonably prejudicing national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour.

Ad clause 46

The object, scope and impact of clause 46 are not clear. If it is the intention to provide that planning authorities take account of the movement of freight by rail and ships in their freight transport plans, we recommend, that the clause be re-drafted to clearly reflect the intention. However, if it is the intention that planning authorities develop freight transport strategies, including strategies for rail and shipping, this is contrary to the DOT's confirmation that freight rail and port terminals are excluded from the scope of the Bill. We assume that the intention is the first-mentioned, and therefore recommend that this clause be re-drafted as follows:

"Road freight transport

46.

- (1) Subject to requirements prescribed by the Minister under section 45(2), planning authorities must develop road freight transport strategies, with due regard to national and provincial policy, covering the transportation of goods to, from and through the area by road, taking into account –
 - (a) the movement of goods to, from and through the area by rail or pipeline; and
 - (b) the movement of goods to and from ports or airports.
- (2) The strategy referred to in subsection (1) must identify routes for moving goods so as to promote their seamless movement and avoid conflict between road freight transport and other road traffic.
- (3) The strategy referred to in subsection (1) must also include a plan for the movement of dangerous substances contemplated in section 2(1) of the Hazardous Substances Act, 1973 (Act No. 15 of 1973), by road along designated routes in accordance with the general strategy or plan provided for in the relevant PLTF.
- (4) A person may not transport dangerous substances in the area of a planning authority except on a route so designated and indicated in an ITP, where such a route has been determined and published.
- (5) Any person who contravenes or fails to comply with subsection (4) is guilty of an offence."

We trust that Transnet's comments set out above will be taken into consideration when refining the Bill to reflect the policy intention. Should you require any discussion with us on these matters, we would welcome the opportunity to meet with you.

It would be appreciated if Transnet could be informed as to whether our comments have been accommodated, and of any subsequent amendments to the Bill that may impact on Transnet.

We look forward to hearing from you.

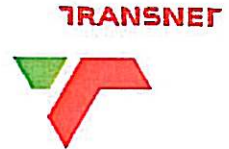
Kind regards



Sue Lund

Acting Group Executive: Office of the Group Chief Executive

Date: 30th April 2008



Mr M Mokonyama
Acting Deputy Director-General
Integrated Planning & Inter-sphere Coordination
Department of Transport
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Cnr Bosman & Struben Street
Pretoria

AND BY FAX: (012) 309-3486

Dear Mr Mokonyama

DRAFT NATIONAL LAND TRANSPORTATION BILL

Following the Department of Transport's ("DOT") notice in the Sunday Times (dated 16 March 2008) regarding the above, representatives of Transnet Limited ("Transnet") attended the public forum meeting hosted by DOT at the CSIR on 26 March 2008.

I understand that DOT undertook, in the course of the public forum meeting, to make available a copy of the updated version of the draft National Land Transportation Bill for our further review.

I would be grateful if DOT could also clarify the following:

1. whether freight rail is intended to be included or excluded from the scope of the Bill;
2. whether port terminals are intended to be included or excluded from the scope of the Bill; and
3. the timeframes for the consultation process for the Bill.

The provision of the updated version of the Bill and clarification sought will assist Transnet to provide DOT with detailed commentary on the draft legislation and to engage further with you on the above.

I look forward to hearing from you.

Kind regards

A handwritten signature in black ink, appearing to read "Zola Stephen".

Zola Stephen
Acting Group Executive: Office of the Group Chief Executive
Date: 09/04/2008

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Dear Mr Z Stephen

Your letter dated on the 9 April 2008 has reference

With respect to the National Land Transport Bill, the Department seeks to inform you as follows:

1. Rail freight is not intended to be included in the Bill.
2. Port terminals are not intended to be included in the Bill
3. The Public Consultation process terminates on 30th April 2008.

The updated version of the Bill was published on the 1st April 2008 in Government Gazette no. 30928, Notice no. 424. The Bill is also published on the Department website, www.transport.gov.za.

Hoping the above is of assistance
Please feel free to contact me for any further information

Regards,

JITS PATEL
ACTING CHIEF DIRECTOR: INTEGRATED TRANSPORT PLANNING

DATE: 10/04/2008