
GENERAL NOTICE

NOTICE 144 OF 2014

PROTECTION OF CRUCIAL INFRASTRUCTURE BILL PUBLICATION AND INVITATION FOR PUBLIC COMMENT

In accordance with Rule 241(1)(b) of the Rules of the National Assembly, notice is hereby given that Lindiwe Desire Mazibuko MP intends introducing a private member's bill shortly in order to make provision for the establishment, composition, functions and duties, meetings, financing and reporting of the Crucial Infrastructure Board; the suspension and removal of members of the board; the determination and declaration of crucial infrastructure and ensuring that security measures are implemented at crucial infrastructure; the creation of a register containing the areas declared as crucial infrastructure; setting out the rights and duties of owners of crucial infrastructure; the limitation of the liability of the state; parliamentary oversight of the board; the creation of offences and penalties; transitional provisions; and, the repeal of the National Key Points Act, No. 102 of 1980, and related legislation.

A copy of the draft Protection of Crucial Infrastructure Bill and a memorandum setting out its objectives are included in the schedule to this notice in fulfillment of the requirements of Rule 241(1)(c) of the Rules of the National Assembly.

Interested parties and institutions are invited to submit written representations on the draft bill to the Secretary to Parliament within 30 days of the publication of this notice.

Representations can be delivered to the Secretary to Parliament, Old Assembly Building, Parliament Street, Cape Town or mailed to the Secretary to Parliament, P O Box 15, Cape Town 8000 or e-mailed to mbcoetzee@parliament.gov.za and copied to leader@da.org.za.

25 February 2014
L D Mazibuko MP

SCHEDULE

REPUBLIC OF SOUTH AFRICA

**PROTECTION OF CRUCIAL
INFRASTRUCTURE BILL**

(As introduced in the National Assembly (proposed section 76)
(Prior notice of its introduction published in Government Gazette No. 37403 of 3 March 2014)
(The English text is the official text of the Bill)

(L D Mazibuko MP)

[PMB2-2014]

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
-

BILL

To provide for the establishment, composition, functions and duties, meetings, financing and reporting of the Crucial Infrastructure Board; to provide for the suspension and removal of Members of the Board; to provide for the determination and declaration of Crucial Infrastructure; to ensure that security measures are implemented at Crucial Infrastructure; to provide for a Register containing the areas declared as Crucial Infrastructure; to set out the rights and duties of owners of Crucial Infrastructure; to provide for the limitation of the liability of the State; to provide for parliamentary oversight of the Board; to create offences and penalties; to provide for transitional provisions; to repeal the National Key Points Act 102 of 1980 and related legislation.

PREAMBLE

WHEREAS section 198 of Constitution of the Republic of South Africa, 1996 requires national security to reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and to seek a better life;

AND WHEREAS that national security must be pursued in compliance with the law, subject to the authority of Parliament and the national executive;

RECOGNISING that disruption to Crucial Infrastructure can endanger the national security of the Republic;

DESIRING to achieve and maintain trustworthy, legitimate and open protection of Crucial Infrastructure, in accordance with the Constitution for the continued national security of the Republic;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF SECTIONS**CHAPTER 1****DEFINITIONS, OBJECTS, APPLICATION AND INTERPRETATION OF ACT**

1. Definitions
2. Objects of Act
3. Application and interpretation of Act

CHAPTER 2 CRUCIAL INFRASTRUCTURE BOARD

4. Establishment of Crucial Infrastructure Board
5. Composition of Board
6. Removal and suspension
7. Functions and Duties of Board
8. Meetings of Board
9. Financing of Board
10. Reporting

CHAPTER 3 DETERMINING AND DECLARATION OF AND SECURITY MEASURES AT CRUCIAL INFRASTRUCTURE

11. Determining and declaring Crucial Infrastructure
12. Security measures at Crucial Infrastructure

CHAPTER 4 ESTABLISHMENT OF REGISTER

13. Establishment of Register

CHAPTER 5 RIGHTS AND DUTIES OF OWNERS AND LIMITATION OF LIABILITY OF STATE

14. Rights and duties of owners
15. Limitation of liability of State.

CHAPTER 7 PARLIAMENTARY OVERSIGHT

16. Parliamentary Oversight

CHAPTER 8 GENERAL PROVISIONS

17. Offences and penalties

18. Regulations
19. Transitional provisions
20. Repeal of laws
21. Short title and commencement

SCHEDULE 1

Laws Repealed

CHAPTER 1

DEFINITIONS, OBJECTS, APPLICATION AND INTERPRETATION OF ACT

Definitions

1. In this Act, unless the context otherwise indicates—
 - “**area**” means any soil or water surface, whether with a building, an installation or a structure thereon or not, and includes air space;
 - “**Board**” means the Crucial Infrastructure Board established in terms of section 4;
 - “**Chairperson**” means the Chairperson of the Board;
 - “**Committee**” means the portfolio committee responsible for Police;
 - “**Crucial Infrastructure**” means systems and assets, declared as such in terms of section 11;
 - “**disaster**” means disaster as defined in the Disaster Management Act, 2002 (Act No. 57 of 2002);
 - “**intelligence**” means all processed, gathered, evaluated, correlated and interpreted security information including activities related thereto;
 - “**Member**” means a Member of the Board;
 - “**Minister**” means the Minister responsible for Police;
 - “**owner**” in relation to any area or place declared Crucial Infrastructure includes—
 - (a) the person registered as the owner of the land constituting such area or place;
 - (b) the lawful occupiers of the land constituting such place or area;
 - (c) an executor, administrator, guardian, trustee, liquidator, curator or other person who controls the estate and assets of that person or represents him or her where the person referred to in paragraph (a) or (b) is either deceased, a minor, insolvent or legally incompetent;
 - (d) the head of the department under control of which the place or area is where the State owns or occupies such place or area; or
 - (e) any person under whose direct control or management such place or area is, where the person referred to in paragraphs (a) to (d) cannot be identified;
 - “**place**” means any premises, building, structure, installation or industrial complex;
 - “**Register**” means the Register referred to in section 13;
 - “**security clearance**” means the security clearance issued in terms of section 2A(6) of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994) by any intelligence structure referred to in that Act;
 - “**security measures**” includes, but is not limited to—
 - (a) the employment and hiring of the services of security officers;
 - (b) the determination of the number of security officers required for the securing of Crucial Infrastructure;

- (c) the instructions relating to the use of firearms, weapons and ammunition at a Crucial Infrastructure;
 - (d) the management and administration in respect of safeguarding, protection and security;
 - (e) the implementation of security standards for a Crucial Infrastructure;
 - (f) egress and access control; or
 - (g) the security training standards for security officers responsible for the safeguarding of a Crucial Infrastructure; and
- “security service” means security service as contemplated in Chapter 11 of the Constitution of the Republic of South Africa, 1996.

Objects of Act

2. The objects of this Act are to ensure—
- (a) the adequate protection of Crucial Infrastructure within the Republic;
 - (b) the creation of procedures for the determination and protection of Crucial Infrastructure that are open and transparent; and
 - (c) accountable administration of Crucial Infrastructure while ensuring that the security of the Republic is maintained.

Application and interpretation of Act

3. (1) This Act applies to all places or areas declared as Crucial Infrastructure within the Republic.
- (2) In the event of any conflict between this Act and any other law in force at the commencement of this Act, this Act prevails.

CHAPTER 2 CRUCIAL INFRASTRUCTURE BOARD

Establishment of Crucial Infrastructure Board

4. (1) There is hereby established a juristic person to be known as the Crucial Infrastructure Board.
- (2) The Board must be impartial and perform its functions without fear, favour or prejudice.

Composition of Board

5. (1) The Board Members are appointed by the Minister after consultation with the National Assembly.
- (2) The Board must consist of not more than 12 Members comprising of the following persons:
- (a) Two persons from the Crime Intelligence Division of the South African Police Service;
 - (b) two persons from the Cyber Crimes Unit of the South African Police Service;
 - (c) three persons with expertise in State Security;
 - (d) three persons from the Intelligence Division of the South African National Defence Force;

- (e) one person with expertise in Public Works; and
- (f) a retired judge of the High Court of South Africa.
- (3) A person referred to in subsections 2(a) to (d) must—
 - (a) have at least eight years experience in intelligence, security or defence;
 - (b) have adequate knowledge regarding the protection and identification of Crucial Infrastructure; and
 - (c) have undergone security clearance.
- (4) A person who—
 - (a) has been convicted of a crime on or after 17 December 1996;
 - (b) is not a fit and proper person;
 - (c) is not a citizen of or permanently resident in the Republic;
 - (d) has been declared of unsound mind by a competent court of law; or
 - (e) is an unrehabilitated insolvent,is disqualified from being appointed as a Member.
- (5) The Member referred to in subsection 2(f) is the Chairperson of the Board.
- (6) The Minister must within 14 days of the appointment of a Member, publish in the *Gazette* the name of the Member he or she appointed.

Removal and suspension

6. (1) A Member must, after due enquiry, be removed from the Board by the Minister if the Member—
- (a) has been found guilty of misconduct;
 - (b) has been found guilty of any criminal offence;
 - (c) is incapable of performing his or her duties effectively;
 - (d) is absent from two consecutive meetings of the Board without the prior permission of the Board, except on good cause shown;
 - (e) resigns;
 - (f) is no longer a fit and proper person;
 - (g) has their security clearance revoked; or
 - (h) is no longer a citizen of the Republic.
- (2) A Member must be suspended from the Board by the Minister if—
- (a) he or she is charged with any criminal offence; or
 - (b) a government investigation has been instituted against that Member.
- (3) Members may be removed or suspended from the Board by a majority vote taken in the National Assembly, provided that the removal or suspension by the National Assembly is not confined to reasons stated in subsections (1) and (2).
- (4) In case of a vacancy, the Minister must fill the vacancy within a reasonable period of time, which period may not exceed three months.

Functions and duties of Board

7. (1) The Board must—
- (a) determine and declare areas as Crucial Infrastructure in accordance with section 11;
 - (b) determine and order security measures for Crucial Infrastructure;
 - (c) keep the Register contemplated in section 13;
 - (d) advise owners of Crucial Infrastructure of relevant security measures;
 - (e) coordinate the security of Crucial Infrastructure;

- (f) consider petitions from owners claiming unnecessary inconvenience in the implementation of security measures;
 - (g) submit quarterly reports to the Minister for tabling in the National Assembly;
 - (h) review the vulnerability of Crucial Infrastructure and their security measures; and
 - (i) perform any other function related to this Act.
- (2) (a) The Board may delegate any of its powers that relates to the administrative functioning of the Board.
- (b) Any delegation under paragraph (a) does not divest the Board of any power it has delegated.

Meetings of Board

8. (1) The Board must have a minimum of four meetings per calendar year and must submit its programme to the Minister for tabling in the National Assembly by 1 March every year.
- (2) The Chairperson may convene the Board at any reasonable time at a place determined by him or her.
- (3) If the Chairperson is absent from any meeting of the Board, the Members present must elect another Member from among themselves to preside at that meeting.
- (4) Seven Members, which must include—
- (a) a Member appointed in terms of section 5(1)(a) or (b); and
 - (b) a Member appointed by the Cabinet Member responsible for Defence;
- constitute a quorum at any meeting of the Board.
- (5) The decision of a majority of the Members present at a meeting of the Board constitutes a decision of the Board.
- (6) In the event of an equality of votes on any matter, the person presiding at the meeting in question has a casting vote in addition to his or her deliberative vote.
- (7) The minutes of each meeting of the Board must reflect the details of all votes cast.
- (8) The Board may determine its own rules and procedures for the conducting of its meetings.

Funding of Board

9. (1) Each Member will receive such remuneration, allowances and other benefits as determined by the Minister in concurrence with the Cabinet Member responsible for Finance.
- (2) Money required for the functioning of the Board and the security measures must be defrayed from money appropriated by Parliament to the Department of Police for that purpose.

Reporting

10. (1) The Minister must table in the National Assembly quarterly reports on all activities performed in terms of this Act in particular—
- (a) the declaration and determination of each Crucial Infrastructure;
 - (b) the allocation and expenditure of funds in the fulfillment of functions under this Act;
 - (c) the determination of specific security measures for each Crucial Infrastructure;
 - (d) the implementation of security measures at each Crucial Infrastructure;

- (e) the number of security officers deployed to each Crucial Infrastructure;
 - (f) the security clearances of security officers;
 - (g) the status of reviews in terms of section 11(10) and (11);
 - (h) the status of owner submissions made in terms of section 12(1); and
 - (i) any delegation of powers done in terms of section 7(2).
- (2) The reports referred to in subsection (1) must be open to the public unless it is justifiable to do otherwise in an open and democratic society.

CHAPTER 3

DETERMINING AND DECLARING OF AND SECURITY MEASURES AT CRUCIAL INFRASTRUCTURE

Determining and declaring Crucial Infrastructure

11. (1) The Board must determine the places or areas that are Crucial Infrastructure if it falls within the categories in subsection (3).
- (2) When determining Crucial Infrastructure, the Board must indicate the category in which the Crucial Infrastructure falls.
- (3) Crucial Infrastructure must fall within one of the following categories:
- (a) A place or area used for the storage and development of—
 - (i) chemical warfare agents;
 - (ii) biological warfare agents; or
 - (iii) defensive capabilities against the effects of weapons of mass destruction,
as defined in the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 97 of 1993);
 - (b) computing and telecommunications equipment, software and processing facilities;
 - (c) medical, police fire and rescue systems that can be called upon to respond to emergencies;
 - (d) energy which includes—
 - (i) the production and holding facilities for—
 - (aa) natural gas;
 - (bb) crude and refined petroleum;
 - (cc) petroleum-derived fuels; or
 - (dd) the refining and processing facilities for the fuels and pipelines that transport the commodities referred to in items (aa), (bb) and (cc);
 - (ii) generation stations, transmission and distribution networks that create and supply electricity to end users;
 - (iii) any civilian area or place that deals with nuclear research or activities; or
 - (iv) any place or area used in the enrichment and storage of uranium;
 - (e) financial services which includes—
 - (i) any place or area which enables South Africa to successfully compete in global economic markets; or
 - (ii) retail, commercial organisations, investment institutions, exchange boards, trading houses and reserve systems that support activities of monetary transactions, including its storage for saving purposes, its investment for

- income purposes, its exchange for payment purposes and its disbursement in the form of loans and other financial instruments;
- (f) any area or place used in the continuity of constitutional democracy;
 - (g) the public health service which include the prevention of disease, health related surveillance, laboratory or personal health services;
 - (h) the physical distribution systems crucial to State security and economic interest including—
 - (i) national airspace systems;
 - (ii) airports;
 - (iii) traffic movement systems;
 - (iv) ports;
 - (v) waterways; or
 - (vi) railway stations; or
 - (i) Water which includes—
 - (i) sources of water;
 - (ii) reservoirs;
 - (iii) aqueducts;
 - (iv) filtration, cleaning and treatment systems; or
 - (v) waste water systems.
- (4) Once the Board has determined that a place or area falls within a category listed in subsection (3), the vulnerability of such place or area must be determined by the Board in accordance with subsection (5).
- (5) The vulnerability of a Crucial Infrastructure is determined with due consideration to all intelligence relating to the probability of such place or area being subject to—
- (a) a threat or use of force;
 - (b) terrorism or terrorist related activity;
 - (c) an unlawful and intentional—
 - (i) communication, delivering or making available of information classified top secret, secret or confidential; or
 - (ii) obtaining, collecting, capturing, or copying a record containing information classified top secret, secret or confidential to a foreign state;
 - (a) an act that would expose information that would threaten the constitutional order of the Republic;
 - (b) sabotage; or
 - (c) serious violence directed at overthrowing the constitutional order of the Republic.
- (6) In determining an area or place as a Crucial Infrastructure, the Board must take into consideration the consequences if such an area or place is subjected to an action listed in subsection (5).
- (7) Before a determination of the area or place as Crucial Infrastructure, the owner must be notified of the intended determination.
- (8) Once an area or place has been determined as a Crucial Infrastructure, the Board must declare it as such and must—
- (a) decide on, and order the security measures necessary to protect such a Crucial Infrastructure;
 - (b) publish the declaration in the *Gazette*; and
 - (c) add such place or area to the Register.
- (9) A list of the names and categories of all the places and areas declared as Crucial Infrastructure must be made available on the website of the South African Police Service unless the Minister, after consultation with the National Assembly decides that the

publication of the name and category will increase the vulnerability of the place or area to such an extent that national security will be threatened.

(10) (a) The Board must, at least once in the financial year, review the security measures of all Crucial Infrastructure, which excludes Crucial Infrastructure that has been declared within the same financial year of the review.

(b) The Board may after a review make changes to the security measures.

(11) (a) The Board must review the vulnerability of all Crucial Infrastructure at least once a financial year.

(b) The Board must decide if the area or place still qualifies as a Crucial Infrastructure after it has completed the review referred to in paragraph (a).

(c) The review referred to in paragraph (a) does not include Crucial Infrastructure that has been declared within that financial year.

(12)(a) If the Board determines that a place is no longer a Crucial Infrastructure, it must within 14 days of such determination publish this determination in the *Government Gazette*.

(b) The Board must, after the determination referred to in paragraph (a)—

(i) ensure the removal of all security measures ordered by it from the area or place; and

(ii) ensure the removal of the place or area from the Register.

Security measures at Crucial Infrastructure

12. (1) When deciding on the security measures to be implemented at a Crucial Infrastructure, the Board must—

(a) hear submissions from owners who allege that security measures can be implemented in a more convenient way;

(b) request submissions from the relevant security services; and

(c) ascertain if the measures can be implemented in a different way to accommodate both the owner and the necessary security measures.

(2) Security measures implemented at the Crucial Infrastructure may not hamper the functioning of the Crucial Infrastructure.

(3) The implementation of security measures must be done in a way that least inconveniences owners.

(4) (a) Notwithstanding the provisions in the Disaster Management Act, 2002 (Act No. 57 of 2002), all emergency services must assist in an emergency at a declared Crucial Infrastructure, when so requested in writing by the South African Police Service, State Security Agency, or the South African National Defence Force without a disaster being declared in the *Government Gazette*.

(b) In the event of a disaster—

(i) municipal services will not be bound by municipal boundaries; and

(ii) Members of emergency services will not be committing an offence based on the sole fact that they are gaining access to a Crucial Infrastructure without the required authorisation.

CHAPTER 4 ESTABLISHMENT OF REGISTER

Establishment of Register

13. (1) The Board must establish and keep a Register which shall be known as the Register of Crucial Infrastructure.
- (2) The Board must enter into the Register the title, category and any other information as prescribed by the Minister of Crucial Infrastructure determined in accordance with this Act.
- (3) Access to the contents of the Register is restricted to—
- (a) Members;
 - (b) the Committee; and
 - (c) persons with appropriate security clearance.

CHAPTER 5 RIGHTS AND DUTIES OF OWNERS AND LIMITATION OF LIABILITY OF STATE

Rights and duties of owners

14. (1) An owner must cooperate with the Board and security services in respect of security measures prescribed for Crucial Infrastructure by the Board.
- (2) An owner may not bear any costs for the provision of security measures ordered by the Board.

Limitation of liability of State

15. The State, the Minister, the Board or any person in the service of the State is not liable for any loss or damage as result of bodily injury, loss of life or damage to property caused by, or arising out of, or in connection with any conduct ordered, performed or executed under this Act, unless the State, the Minister, the Board or any person in the employ of the State acted with gross negligence, negligence or intent.

CHAPTER 6 PARLIAMENTARY OVERSIGHT

Parliamentary oversight

16. (1) The portfolio committee responsible for Police must oversee the Board.
- (2) The committee must fulfill the following functions:
- (a) Oversee that areas and places have been properly considered as Crucial Infrastructure;
 - (b) oversee that Crucial Infrastructure have proper, appropriate and adequate security measures in place;
 - (c) oversee expenditure made in terms of the Act;
 - (d) make recommendations on the suitability of Members; and
 - (e) exercise any other power in line with the objectives of this Act.
- (3) The meetings of the Committee must be open to the public when performing its oversight function except when—

- (a) it is considering the intelligence that the Board used when the Board determined the vulnerability of the places or areas; or
 - (b) it is considering the security measures ordered by the Board and the implementation thereof at a Crucial Infrastructure.
- (4) Members of the Committee must obtain security clearance in order to exercise the oversight function referred to subsection 3.

CHAPTER 7 GENERAL PROVISIONS

Offences and penalties

17. (1) Any person who, intentionally or negligently—
- (a) hinders, obstructs or disobeys any person in the fulfillment of their functions in terms of this Act;
 - (b) unlawfully discloses, in any manner, any information relating to the security measures implemented at a Crucial Infrastructure without being legally obliged or entitled to do so, or as may be necessary for the performance of functions under this Act; or
 - (c) commits any act which damages, endangers, disrupts or threatens a Crucial Infrastructure,
- is guilty of an offence.
- (2) Any person found guilty of an offence referred to in subsection (1) is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment not exceeding 25 years or to both a fine and imprisonment.

Regulations

18. (1) The Minister may make regulations with regard to—
- (a) any matter that in terms of this Act may or must be prescribed; and
 - (b) any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act.

Transitional provisions

19. (1)(a) Places or areas that have been declared National Key Points in terms of the National Key Points Act, 1980 (Act No. 102 of 1980), will be deemed to have been determined a Crucial Infrastructure in terms of this Act until the Board has reviewed its status as contemplated in subsection (4).
- (b) Any proclamation, regulation, notice, approval, authority, licence, permit, certificate or document issued, made, given or granted in terms of the National Key Points Act, 1980 (Act No. 102 of 1980), shall be deemed to have been issued, made, given, granted or taken under the corresponding provision of this Act.
- (2) Within three months of the commencement of the Act, the Members must be appointed.
- (3) The Minister must, within five days of the Board being fully appointed, provide a list of all National Key Points to the Board.

(4) All National Key Points must, within 275 days of the list being provided to the Board, be reviewed and if found to conform to the requirements set out in section 11, be determined a Crucial Infrastructure in terms of that section.

(5) Any person appointed in terms of section 6 of the National Key Points Act, 1982 (Act No. 102 of 1980) who is also an officer or employee appointed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), continues to be an employee or officer under the Public Service Act, 1994.

Repeal of laws

20. (1) Subject to subsection (2), the laws mentioned in Schedule 1 are hereby repealed to the extent set out in the third column thereof.

(2) Any proclamation, regulation, notice, approval, authority, licence, permit, certificate or document issued, made, given or granted and any other action taken under any other provision of a law related to legislation mentioned in subsection (1) is repealed.

Short title and commencement

21. This Act is called the Protection of Crucial Infrastructure Act, 2014 and comes into operation on a date fixed by the President by proclamation in the *Government Gazette*.

Schedule 1

| No. and year of law | Short title | Extent of repeal |
|---------------------|------------------------------------------------------|------------------|
| Act No. 102 of 1980 | National Key Points Act, 1980 | The whole |
| Act No. 25 of 2002 | Electronic Communications and Transactions Act, 2002 | Section 53 |

MEMORANDUM ON THE OBJECTIVES OF THE PROTECTION OF CRUCIAL INFRASTRUCTURE BILL OF 2013

1. BACKGROUND

- 1.1 The Protection of Crucial Infrastructure Bill (hereinafter the “Bill”) seeks to repeal the National Key Points Act, No. 102 of 1980 (hereinafter the “Act”), in its entirety. The Act was drafted in 1980 by the apartheid government in response to sabotage and is inappropriate in a constitutional democracy.
- 1.2 The Act gives far reaching powers to the Minister of Police without scrutiny. The Act is fundamentally at odds with the values of openness and participation which underpin the Constitution.
- 1.3 Prompted by the Act’s contradiction with the values found in the Constitution, there is a need for the repeal of the entire Act as it has no place in a constitutional and democratic South Africa.
- 1.4 The Bill seeks to protect infrastructure crucial to the national security of the Republic in a manner consistent with the Constitution in an open and transparent manner

2. OBJECTS OF THE BILL

- 2.1 Clauses 1, 2 and 3 deal with definitions of terms and the objects and application of the Bill.
- 2.2 Clause 4 provides for the establishment of the Crucial Infrastructure Board as a juristic person.
- 2.3 Clause 5 provides for the composition of the Board to ensure that appropriate expertise is utilised in the determination of Crucial Infrastructure. The clause also sets out from where this expertise must be drawn and who must appoint persons to the Board.
- 2.4 Clause 6 sets out how Members of the Board must be removed to prevent Members that are no longer eligible or appropriate from sitting on the Board.
- 2.5 Clause 7 provides for the functions and duties of the Board, to ensure that the Members of the Board operate within the confines of the law and assist in keeping the Board accountable. The functions listed also assist the Board in understanding its mandate.
- 2.6 Clause 8 sets out how meetings of the Board must take place. This will prevent procedural issues from stopping the functioning of the Board. It also requires that the Board meet at minimum four times a year, to create a minimum threshold for the Board.
- 2.7 Clause 9 provides for the financing of the Board.

- 2.8 Clause 10 provides how the Board will report to the National Assembly. This thus caters for the proper accountability of the Board. It also ensures any improper conduct on the side of Board Members is guarded against.
- 2.9 Clause 11 sets out how the Board must go about determining and declaring Crucial Infrastructure. Crucial infrastructure must fall within one of the categories. Once it is determined that the place falls within one of the categories, the vulnerability of the place must be determined considering intelligence and the consequences of losing the place or area. Upon the proper consideration of these factors the Board will then declare the place Crucial Infrastructure and determine the appropriate security measures that must be in place at the infrastructure. The Board will also have to review Crucial Infrastructure annually to prevent Crucial Infrastructure receiving security measures it no longer requires.
- 2.10 Clause 12 sets out what the Board must take into account when it determines the security measures at Crucial Infrastructure.
- 2.11 Clause 13 creates a register of Crucial Infrastructure, so that a reliable and accurate record of Crucial Infrastructure is kept.
- 2.12 Clause 14 contains the rights and duties of owners of places that have been declared Crucial Infrastructure.
- 2.13 Clause 15 sets out the limitation of the liability of the State.
- 2.14 Clause 16 sets out the oversight of the Bill by the National Assembly. The oversight will be done by the Committee in the National Assembly responsible for overseeing the South African Police Service. Further, the oversight will be done in open committee meetings, with closed meeting being allowed only in certain limited circumstances.
- 2.15 Clause 17 creates offences and penalties.
- 2.16 Clause 18 makes provision for the Minister to make regulations
- 2.17 Clause 19 deals with the transitional arrangement, to ensure that places that have already been declared National Key Points be given the appropriate protection during this time. The clause also requires that the list of National Key Points be given to the Board, so that the Board can within 275 days determine which of those National Key Points meet the requirements of a Crucial Infrastructure.
- 2.18 Clause 20 repeals the National Key Points Act and section 53 of the Electronic Communications and Transactions Act.

3. FINANCIAL IMPLICATIONS FOR THE STATE

There will be financial implications for the Bill. Among others, there will be costs in the following areas:

- Financing the Board

- Security measures required by the Board.

4. PARLIAMENTARY PROCEDURE

- 4.1. It is proposed that the Bill be dealt with in terms of the procedure established by section 76 of the Constitution, since it falls within functional areas listed in Schedule 4 of the Constitution, namely “health services, airports other than international and national airports”, “public transport”, “road traffic regulation”, “pontoon, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto” and “water and sanitation services limited to potable water supply systems and domestic waste-water and sewerage disposal systems”.
- 4.2 It is proposed that that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.
-