

GAUTENG PROVINCIAL LEGISLATURE

**GAUTENG TRANSPORT
INFRASTRUCTURE
AMENDMENT BILL, 2003**

(As introduced)

BY

(MEMBER OF EXECUTIVE COUNCIL FOR PUBLIC TRANSPORT, ROADS AND WORKS)

[G006—2003]

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 amend the Gauteng Transport Infrastructure Act, 2001, so as to amend and insert certain definitions; to provide for the necessary land use rights with respect to stations and for the necessary powers of the MEC to enter into contracts for road and rail projects; to amend the procedure in relation to route determination; to make a second environmental investigation at the stage of preliminary design of a road or railway line unnecessary where the competent environmental authority decides that the environmental investigation at the stage of route determination is adequate; and to provide for incidental matters.

BE IT ENACTED by the Gauteng Legislature as follows:—

Amendment of section 1 of Act 8 of 2001

1. Section 1 of the Gauteng Transport Infrastructure Act, 2001 (hereinafter referred to as the “principal Act”) is hereby amended— 5

(a) by the substitution for the definition of “rail reserve” of the following definition:

“**‘rail reserve’** means the full width of a railway line [**as proclaimed or expropriated**] including stations and signalling and marshalling facilities, and other related facilities; [**including commercial facilities**] 10

(b) by the substitution for the definition of “railway line” of the following definition:

“**‘railway line’** means rail facilities for the use of heavy or light rail and, where the context so indicates, a right of way, [**for the use of heavy or light rail proclaimed, designated or expropriated as such under this Act**] whether on or below the surface of the land and includes the rail reserve and a temporary deviation thereof.” 15

(c) by the insertion of the following definition after the definition of “State”:
“**‘station’ means a railway station or a railway passenger terminal and includes—** 20

(a) the area within a station used or to be used for facilities necessary for the operation, maintenance and administration of a railway system or activities associated therewith or incidental thereto, including, but not limited to, workshops, storerooms, administrative offices, staff accommodation, fire stations and ventilation shafts; 25

- (b) the area within the station used or to be used in connection with a railway system for parking of vehicles, parking garages, drop-off and pick-up areas, inter-modal transfer of passengers and public transport facilities including feeder and distribution services and facilities, and such commercially related land uses as are directly associated with commuter convenience, including advertising, selling of refreshments, newspapers and magazines, vending machines, public telephones and electronic banking facilities; and
- (c) may include other commercial or retail land uses which may only be exercised after the necessary land use rights have been approved in terms of any relevant planning legislation;”

Substitution of section 6 of Act 8 of 2001

2. The following section is hereby substituted for section 6 of the principal Act:

- “6. (1) In determining the route of a provincial road or railway line, the amendment of a route published in terms of subsection (9) or deemed to have been published in terms of subsection (10)(1), or the amendment of a route of an existing provincial road or railway line, the MEC must cause a preliminary route alignment to be done, in the form of a written report as prescribed and containing recommendations with respect to the route and the MEC must thereafter follow the procedure set out in this section.
- (2) Before determining a route or amended route, the MEC must cause such environmental investigation and report in respect thereof to be done as the competent authority contemplated in section 22 of the ECA, or the authority contemplated in the relevant corresponding sections of NEMA once those sections come into operation, may decide.
- (3) The MEC must thereafter cause a notice to be published in the prescribed form and manner, containing—
- (a) a broad description of the proposed route;
 - (b) particulars of the times and places at which the preliminary route report and environmental report can be inspected and copies be made;
 - (c) an invitation to all interested and affected parties to comment in writing before a date, not less than 30 days after publication of the notice, on the recommended route; and
 - (d) a reference to the regulatory measures which take effect in terms of section 7 on the publication of the route in terms of subsection (11).
- (4) The MEC must also consult with all municipalities in whose areas the route will be situated and request them, within a specified time, to submit written comments on the preliminary route report and environmental report with specific reference also to the effect which the proposed route may have on any spatial framework or other strategic municipal development planning of the municipality concerned.
- (5) After the time for comments set in terms of subsections (3)(c) and (4) has elapsed, the MEC must consider the preliminary route report and environmental report as well as written comments, if any, submitted in terms of subsections 3(c) and (4), and may thereafter—
- (a) determine a route for the provincial road or railway line; or
 - (b) subject to subsections (6) to (9), refer a specific issue or issues arising from the said reports or comments to a commission to hold a public inquiry advising on those specific issues within a time period as determined by the MEC and, after having considered such advice, determine a route for the provincial road or railway line.
- (6) The commission contemplated in subsection (5)(b) shall consist of not more than 12 suitably qualified members of whom—
- (a) at least two are persons appointed by reason of their qualifications in and knowledge or experience of land development and are persons who are in the MEC’s opinion competent to perform the functions assigned to them in terms of this section;
 - (b) not more than two are persons nominated by municipalities in whose areas the route will be situated, if such persons are indeed nominated within 14 days after being requested to do so in writing by the MEC;

- (c) one is an official from the Department of Development Planning and Local Government or its successor;
- (d) one is an official from the Department;
- (e) at least two are professional civil engineers;
- (f) at least one is a town and regional planner registered as such with the South African Council for Town and Regional Planners as contemplated in the Town and Regional Planners Act, 1984 (Act No. 19 of 1984);
- (g) at least two are persons with appropriate legal qualifications and experience;
- (h) one is a suitably qualified chairperson who may be one of the persons referred to in paragraphs (a) to (g); and
- (i) the chairperson and four other members shall constitute a quorum for purposes of the activities of the commission.
- (7) The MEC must thereafter cause a notice to be published in the prescribed form and manner, containing—
- (a) a summary of the issue or issues referred to the commission;
- (b) a broad description of that part of the route affected by the issue or issues referred to the commission;
- (c) particulars of the times at which and places where the preliminary route report, environmental report and comments received in terms of subsections (3)(c) and (4) relevant to the issue or issues referred to the commission, can be inspected and copies be made;
- (d) an invitation to all the persons directly affected by the issue or issues referred to the commission to—
- (i) comment in writing before a date, not less than 30 days after publication of the notice, on the said issue or issues; and
- (ii) appear at the public inquiry to motivate such written comment should they so wish;
- (e) the date and venue of the public inquiry; and
- (f) a reference to the regulatory measures which take effect in terms of section 7 on the publication of the route in terms of subsection (12).
- (8) On the date mentioned in the said notice, the commission must hold and conduct a public inquiry and in so doing must—
- (a) determine the procedure for the public inquiry which must—
- (i) include a public hearing; and
- (ii) comply with the procedures to be followed in connection with public inquiries as prescribed in terms of section 10(1)(b) of the Promotion of Administrative Justice Act, 2000 (Act No 3 of 2000); and
- (b) conduct the inquiry in terms of the said procedure.
- (9) After having conducted the public inquiry, the commission must compile a written report on the inquiry, having regard, if applicable, to the principles set out in section 3 of the Development Facilitation Act, 1995 (Act No. 67 of 1995) and in provincial planning and development legislation. The report must contain—
- (a) all written comments on the issue or issues referred to the commission;
- (b) a summary of the oral representations made at the public inquiry; and
- (c) recommendations to the MEC in respect of the said issue or issues, with reasons for such recommendations.
- (10) The MEC, in consultation with the Member of the Executive Council responsible for development planning, must ensure that the route determination in terms of subsections (5)(a) or (b), is aligned as far as possible with any spatial framework or other strategic provincial development planning formulated in terms of development planning legislation of the Province.
- (11) After having determined a route for the provincial road or railway line as contemplated in subsections (5)(a) or (b), the MEC must publish the said route by reference to the centre line thereof, by notice in the *Provincial Gazette*, which notice must contain—
- (a) such information, whether by way of a sketch plan, reference to a plan available for inspection at a given address, or otherwise, as the MEC may deem sufficient to indicate the centre line of the route;
- (b) a notification that the regulatory measures set out in section 7 take effect from the date of publication of the notice; and

(c) a notification that reasons for the decision of the MEC with respect to the determination of the route, may be requested by interested and affected parties within 30 days of the date of publication of the notice.

(12) Subject to section 8(2), a route or sections thereof may be amended by the MEC only after having complied with the procedures set out in sections 8(1) to (8) and the amendments to the route must be published as set out in subsection (11).

(13) The provisions of this section are not applicable to access roads.”

Amendment of section 7 of Act 8 of 2001

3. Section 7 of the principal Act is hereby amended by the substitution for the expression “section 6(9)” wherever it occurs of the expression “section 6(11)”.

Amendment of section 8 of Act 8 of 2001

4. Section 8 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the expression “section 6(9)” wherever it occurs of the expression “section 6(11)”.

(b) by the substitution in subsection (2) for the expression “section 6(9) of the expression “section 6(11)” and for the expression “section 6(1) to (9)” of the expression “section 6(1) to (11)”.

(c) by the substitution for paragraph (b) of subsection (4) of the following paragraph:

“(b) such further environmental investigation and written report in respect thereof to be carried out, if any, as the competent authority contemplated in section 22 of the ECA, or the authority contemplated in the relevant corresponding sections of NEMA, once those sections come into operation, may decide;”

(d) by the substitution for paragraph (b) of subsection (5) of the following paragraph:

“(b) the environmental report contemplated in subsection 4(b) or section 6(3)(a), as the case may be;”

(e) by the substitution for paragraph (a) of subsection (6) of the following paragraph:

“(a) the environmental report contemplated in subsection 4(b) or section 6(3)(a), as the case may be; and”

(f) by the substitution in subsection (8) for the expression “section 6(1) to (9)” of the expression “section 6(1) to (11)”.

(g) by the substitution in subsection (10) for the expression “section 6(9)” of the expression “section 6(11)”.

Amendment of section 10 of Act 8 of 2001

5. Section 10 of the principal Act is hereby amended by the substitution in subsection (1) for the expression “section 6(9)” wherever it occurs of the expression “section 6(11)”.

Amendment of section 50 of Act 8 of 2001

6. Section 50 of the principal Act is hereby amended by the insertion of the following paragraph after paragraph (p) of subsection (2):

“(pA) operate, cause to be operated or permit the operation of a railway line and railway system;”

Amendment of section 51 of Act 8 of 2001

7. Section 51 of the principal Act is hereby amended—

(a) by the substitution for the introductory sentence of subsection (1) of the following:

“(1) The MEC may conclude an agreement contemplated in subsection (2) with one or more of the following parties, in this section referred to as “the other party—”

- (b) by the substitution for paragraph (f) of subsection (1) of the following:
 “(f) any other person or body; [in this section referred to as “the other party]”

Insertion of section 51A in Act 8 of 2001

8. The following section is hereby inserted in the principal Act after section 51: 5
- “**51A.** (1) The MEC may, if he or she deems it in the public interest and with the approval of the Member of the Executive Council responsible for financial matters, enter into a contract or contracts in respect of a project for the construction, financing, operation, management, control and supervision of a railway system or future railway system or a railway line or future railway line with any one or more of the parties contemplated in section 51(1), subject to such conditions as may be agreed upon and in respect of— 10
- (a) any of the matters or combinations thereof contemplated in section 51(2) and (3);
- (b) the making available of any land or rights in respect thereof vesting in the MEC by virtue of the proclamation of the railway line or the acquisition or expropriation of land or rights in respect thereof in order to construct, operate, maintain, supervise and control such railway system and railway line, whether by lease or otherwise; 15
- (c) any delegation contemplated in section 56; 20
- (d) the right to exercise the rights and powers conferred upon the MEC in terms of section 50(2)(a), (c), (d), (e), (f), (i), (k), (m), (n), (pA) and (q) in relation to a railway line for the purposes and duration of the contract;
- (e) the exercise by the MEC of such rights or powers conferred upon him or her by this Act, as may be necessary for the construction, operation, management, maintenance, supervision and control of the railway system or railway line on behalf of the other party, all at the cost of the other party, provided always that the exercise of any right or power of discretionary or executive nature shall not be fettered by such contract and shall be exercised only in the public interest; 25 30
- (f) the integration of a railway system, railway line and facilities in respect thereof with airport facilities, with urban surroundings and with other transport infrastructure.
- (2) The MEC may, notwithstanding other laws, transfer or make available for use by or on behalf of any one or more of the parties to a contract contemplated in subsection (1), any servitude or right, whether registered or unregistered, and vesting in the MEC or the Province, for purposes of or in connection with any contract as contemplated in subsection (1) and for the duration of such contract.” 35

Short title

9. This Act is called the Gauteng Transport Infrastructure Amendment Act, 2003. 40

GAUTENG TRANSPORT INFRASTRUCTURE AMENDMENT BILL, 2003

Memorandum in terms of Rule 136 of the Standing Rules of the Gauteng Provincial Legislature.

1. REASONS FOR THE BILL 5

The Gauteng Transport Infrastructure Act, 2001 (Act No. 8 of 2001) (“the Act”) was brought into operation on 31 January 2003, except for sections 44 and 60(a) dealing with outdoor advertising. During the finalisation of tender and contract documents to provide for the proposed Gautrain Rapid Rail Link, certain amendments to that Act have proved to be necessary to enable or facilitate the implementation of that and similar projects. Hence the Gauteng Transport Infrastructure Amendment Bill, 2003 (“the Bill”) has been drafted to effect these amendments. 10

The purpose of the Bill is to provide for the necessary land use rights with respect to stations and for the necessary powers of the MEC to enter into a contract or contracts in respect of the Gautrain Rapid Rail Link or similar projects, with the approval of the MEC responsible for financial matters. 15

Discussions with the local authorities concerned and the Department of Development Planning and Local Government with regard to land use rights in respect of stations on the Rapid Rail Link on the one hand, and the necessity for certainty at the tendering stage in respect of land use rights in respect of stations on the other hand, have resulted in the following scheme of land use rights which are provided for in the amendment: 20

A new definition of “station” is inserted to include the area used for activities directly related to the operation and administration of the railway system and transport activities with respect to passengers arriving at and departing from the station. The station will thus also include areas for the parking of vehicles, parking garages, drop-off and pick-up areas, public transport and the like. 25

Broad consensus was reached with the local authorities concerned after discussions with them that certain land uses within the station precinct need not be regulated by town planning schemes and could be directly provided for in the Act, which would obviate the time consuming procedures in respect of amending the applicable town planning scheme. This includes certain limited commercial activities that are directly associated with commuter convenience, including advertising, selling of refreshments, newspapers and magazines, vending machines, public telephones and electronic banking facilities (automatic teller machines). 30

However, it is foreseen that in the circumstances of most, if not all, stations, it may be desirable to have commercial activities within the station precinct. As these commercial activities may impact directly on the surrounding urban fabric and may have direct consequences with respect to urban infrastructure, it is necessary that land use rights with regard to commercial or retail land uses have to be regulated by the applicable town planning scheme or zoning scheme. This is to provide for the necessary input of the community in the area, as well as a decision of the municipality, before the approval of such rights takes place in terms of any relevant planning legislation. These activities will be situated within the station and land use rights in respect thereof will have to be obtained in terms of relevant planning legislation. 35

Regarding the determination of a route for a new provincial road or railway line, section 4 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) provides for two alternative procedures when an administrator has to come to a decision which may materially and adversely affect the rights of the public, namely a public inquiry or a notice and comment procedure. The present section 6 of the Act opted for a public inquiry procedure. This procedure can be most cumbersome and time consuming and of a duplicating nature where the issues relevant to decision making have been adequately canvassed in the procedure accompanying an environmental investigation and report as contemplated by section 6(3)(a) of the principal Act. Under these circumstances a notice and comment procedure as contemplated by section 4(3) of Act 3 of 2000 will be both practical and expeditious where the environmental report has already been compiled, whereas the public inquiry procedure contemplated in section 4(2) of Act 3 of 2000 can be reserved for those instances where specific issues arise from the notice and comment procedure and the other two reports, which may need further and broader investigation and comment. Section 6 is therefore amended to use a notice and comment procedure for the MEC to come to a decision, and implements the public 45
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inquiry procedure only in respect of specific issues. The administrative justice which is thus attained is therefore of a higher standard than that which is required by Act 3 of 2000 in that both procedures are followed.

The existing Act does not fully provide for the kind of contract which is necessary to be entered into by the MEC for the planning, construction, operation, maintenance, control and supervision of the proposed Gautrain Rapid Rail Link. It was therefore necessary to empower the MEC, also with reference to existing provisions in the Act, to conclude contracts such as the draft contract which is already in existence with the approval of the MEC responsible for financial matters. 5

In this regard it is necessary to provide specifically for the making available of land or rights necessary for the above purposes and to ensure that the necessary powers vested in the MEC can either be exercised by the successful contractor or by the MEC on its behalf, subject to certain safeguards in respect of powers of discretionary or executive nature. The exercise of these powers when granted in the public interest, cannot be fettered or thwarted by the conclusion of contracts. 10 15

Furthermore, it was necessary to create a substantive section whereby personal servitudes or rights vesting in the MEC could be transferred or made available for use by the successful contractor. Servitudes and rights of personal nature cannot by common law be exercised by or transferred to a third party and a specific provision in this regard was thus necessary. 20

It is evident from the concept of the Rapid Rail Link that co-ordinating agreements with other companies and authorities such as the Airports Company Limited and local authorities will have to be concluded by the MEC in order to co-ordinate the integration of the Rapid Rail Link with existing airport systems, transport facilities and the surrounding urban structure. Provision in that regard is thus also made in the Bill. 25

A further objective of the Bill is to rationalise the situation with regard to environmental investigations. In terms of the Act and other legislation three such investigations may be required where a new road or railway line is planned, designed and constructed:

- At the stage of route determination (section 6(3)(a) of the Act); 30
- At the stage of preliminary design (section 8(4)(b) of the Act);
- At the stage of construction of the road or railway line (section 22 of the Environmental Conservation Act, 1989 (Act No. 73 of 1989)). This investigation also covers operational aspects. 35

The first two investigations have been provided for because there is sometimes a considerable lapse of time between route determination and preliminary design. However, a second investigation is not necessary when the two will take place at the same time or soon after each other, as will be the case with the Rapid Rail Link. The Bill therefore amends section 8(4)(b) of the Act to make the second investigation unnecessary where the competent authority contemplated in environmental legislation regards it as unnecessary because the environmental investigation carried out at the stage of route determination has covered all of the relevant aspects. 40

2. ENVIRONMENTAL IMPACT

The environmental impact of the Bill relates to the rationalisation of the environmental investigations as outlined above. The Bill has no other environmental impact. 45

3. FINANCIAL IMPLICATIONS OF THE BILL

There are no financial implications, except that the amendments could bring about streamlined procedures that can save costs.

There are no additional financial implications for local government. There could be cost savings in that some unnecessary rezoning applications will be avoided in the case of station precincts and rail operations areas. 50

4. COMMENTS RECEIVED AND SOLICITED

The provisions of the Bill have been workshopped with local authorities in the Province, who provided input as to the wording of the amendments. The Bill has also been referred for comments to the Department of Development Planning and Local Government and the Department of Agriculture, Conservation, Environment and Land Affairs, and specific discussions have been held with those Departments. The 55

Department considers that It is not necessary to publish the Bill for comment as the amendments are of a technical nature and do not bring about any material changes or changes in principle. The Bill is also extremely urgent.

Regarding the environmental investigations, as stated above, a similar amendment was contained in the Bill that preceded the principal Act when it was published for comment, but the provision was not carried forward into the Act due to an administrative error. No objections were received to the provision. 5

5. CLAUSE-BY-CLAUSE EXPLANATION

Clause 1 of the Bill amends the definitions of “rail reserve” and “railway line” and inserts a new definition of “station” to cater for the objectives outlined above. 10

Clause 2 of the Bill substitutes section 6 of the Act. The new section provides that once a preliminary route report has been prepared and an environmental investigation done, such report and the report of the environmental investigation will be subject to a notice and comment procedure. Relevant municipalities will be consulted specifically regarding the reports. The MEC must then consider the two reports and comments received, and decide either to publish the route or to refer specific issues to a commission for advice. Such issues will be published to allow interested and affected persons to comment, and the commission must then hold a public inquiry and allow persons who have commented to appear to motivate their comments. The commission will then compile a report advising the MEC, who may then take a decision on the route. 15
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This procedure is considered less cumbersome, less time consuming and less duplicating than the present procedure, where issues which have already been adequately covered during the environmental investigation may again be subject to a public inquiry. The new section uses both a notice and comment procedure and a public inquiry procedure, thus complies more fully with the provisions of the Promotion of Administrative Justice Act, 2000. 25

Clause 3 of the Bill amends section 7 of the Act to correct the cross-reference to the new section 6.

Clause 4 of the Bill amends section 8(4)(b) of the Act to provide that a second environmental investigation at the preliminary design stage is not necessary if the competent environmental authority regards it as unnecessary. Other incidental amendments necessitated by that amendment are also made to that section. 30

Clause 5 of the Bill amends section 10 of the Act to correct the cross-reference to the new section 6.

Clause 6 of the Bill amends section 50 to empower the MEC to operate a railway line and railway system for the activities outlined above. 35

Clause 7 of the Bill amends section 51 of the Act to correct a printing error.

Clause 8 of the Bill inserts a new section 51A in the Act to provide for contracts to be concluded for the construction, financing, operation, management, control and supervision of road and rail systems, as indicated above, with the approval of the MEC responsible for financial matters. 40

Clause 9 of the Bill provides the short title.

