

GAUTENG PROVINCIAL LEGISLATURE

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**GAUTENG TOLL ROADS  
BILL, 2003**

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*(As introduced)*

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BY

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

**[G005—2003]**

# GAUTENG TOLL ROADS BILL

**To provide for the declaration, construction, operation, maintenance, and control of provincial toll roads in Gauteng; to define the powers and functions of the Member of the Executive Council responsible for provincial roads in Gauteng; to provide for the operation of toll roads and charging of toll by authorised persons; and to provide for matters connected thereto.**

## PREAMBLE

Recognising that the Gauteng provincial road network is central to development in Gauteng and South Africa;

Recognising that it is essential to maintain and expand the road network in Gauteng to make provision for the growing demand and accessibility needs of road users;

Recognising that the severe congestion on many of the freeways and other major roads in Gauteng demands urgent attention;

Recognising that as part of a provincial land transport policy, a toll roads system for Gauteng provides a proper solution to the problems facing the Gauteng province in respect of its road network; and

**Recognising that private sector involvement is essential in the financing, construction and operation of toll roads in Gauteng.**

**N**OW THEREFORE BE IT ENACTED by the Provincial Legislature of Gauteng, as follows:—

## ARRANGEMENT OF SECTIONS

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## Definitions

1. In this Act, unless the context otherwise indicates -

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“construct” in relation to a road, includes reconstruct, widen, divert, alter, repair, 10 upgrade and expand;

“Department” means the Department in the State responsible for provincial roads;

“Executive Council” means the Executive Council of the Provincial Government;

“existing provincial road” means any provincial road or portion thereof, the construction of which has been completed before the date of declaration of such road as 15 a toll road;

“Infrastructure Act” means the Gauteng Transport Infrastructure Act, 2001 (Act No.8 of 2001);

“MEC” means the Member of the Executive Council responsible for provincial roads; 20

“municipal road” means a road as defined in the Infrastructure Act;

“municipality” means a municipality referred to in section 155(6) of the Constitution, and includes all categories of municipalities;

“new provincial road” means a provincial road other than an existing provincial road; 25

“prescribed” means prescribed by regulation in the *Provincial Gazette*;

“Province” means the province of Gauteng;

“provincial road” means a road as defined in the Infrastructure Act, including a freeway as defined in that Act;

“public road” means a road which the public has the right to use; 30

“regulation” means any regulation made under this Act;

“road” means—

- (a) the road reserve;
- (b) the roadway as defined in the Infrastructure Act;
- (c) land acquired for the construction of a connection between a toll road and 35 another road;

“SANRAL” means the South African National Roads Agency Limited established under section 2 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);

“this Act” includes the regulations; 40

“toll plaza” means a structure on a toll road where toll is payable or any electronic or mechanical device on a toll road for recording the amount of toll to be paid or any combination of such structure and device and includes a toll gate;

“toll road” means a provincial road or a portion thereof which has been declared a toll road under section 2(1)(a) or 2(1)(b) and of which notice has been given in terms of subsection (3) of that section in the *Provincial Gazette*;

“transport authority” means a transport authority established in the Province as prescribed in the provisions of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000);

“vehicle” means a vehicle as defined in the National Road Traffic Act, 1996 (Act No. 93 of 1996).

### **Declaration of toll roads**

**2.** (1) Subject to the provisions of this section, the MEC in consultation with the Premier of the Province—

(a) may declare any specified existing or new provincial road or any specified portion thereof, including any bridge, or tunnel on such existing provincial road, to be a toll road for the purposes of this Act; and

(b) may amend or withdraw any declaration so made.

(2) A declaration, amendment or withdrawal under subsections (1), only becomes effective only 30 days after a notice to that effect by the MEC was published in the *Provincial Gazette*.

(3) The MEC may not declare a toll road under subsection (1)(a), or amend such declaration unless—

(a) the MEC, in the prescribed manner, has given notice, generally, of the proposed declaration or amendment, and in the notice—

(i) has given an indication of the type of toll plaza and the approximate position of the toll plaza for the proposed toll road;

(ii) has invited any interested person to comment or make representations, in writing to the Department, by no later than a specified date being not earlier than 60 days from the date of the notice, on the proposed declaration of the toll road, any amendment to such declaration, the type of toll plaza or its physical location;

(b) the MEC in writing has requested every municipality and transport authority, in whose area of jurisdiction proposed toll road is situated, to comment to the Department on the proposed declaration or amendment and any other matter with regard to the toll road and particularly, as to the type of toll plaza and the position of the toll plaza within a specified period which may not be shorter than 60 days;

(c) the Department has forwarded its proposals and recommendations regarding the declaration or amendment of a toll road to the MEC together with a report on the comments and representations that have been received;

(d) the Department has indicated the extent to which any of the matters raised in any comments and representations made in accordance with this subsection have been accommodated in those proposals and recommendations of the Department; and

(e) the MEC is satisfied that all steps mentioned in this subsection have been complied with.

### **Charging and collection of toll**

**3.** (1) Subject to the provisions of this section the MEC may, by notice in the *Provincial Gazette*—

(a) for the driving or use of any vehicle on a toll road, charge and collect a toll the amount of which has been determined and made known in terms of subsection (3), which will be payable at a toll plaza by a person so driving or using the vehicle, or at any other place subject to the conditions that the MEC may determine and so make known;

(b) grant a rebate or full or partial exemption from the payment of toll on a particular toll road—

(i) in respect of all vehicles of a category determined by the MEC or in respect of the vehicles of such category which are driven or used on the toll road at a specified time or;

- (ii) to all users of the toll road of a category determined by the MEC irrespective of the vehicles driven or used on the toll road, or to users of the toll road of such a category when driving or using vehicles on the toll road at a specified time;
  - (c) restrict the charging of toll on a particular toll road to the hours or other times determined by the MEC; 5
  - (d) suspend the charging of toll on a particular toll road for any specified or unspecified period, whether in respect of all vehicles generally, or in respect of all vehicles of a category or users of a road of a category determined by the MEC and specified in such notice, and resume the charging of toll after the withdrawal of the suspension and; 10
  - (e) withdraw the following—
    - (i) any rebate or exemption under paragraph (b);
    - (ii) any restriction under paragraph (c);
    - (iii) any suspension under paragraph (d) or 15
- (2) A rebate, exemption, restriction or suspension or withdrawal under subsection (1) becomes effective 30 days after the date of publication of the notice contemplated in subsection (1).
- (3) The amount of toll that may be charged under subsection (1), any rebate or exemption thereon and any increase or reduction thereof— 20
- (a) shall be determined by the MEC on the recommendation of the Department after consultation with every municipality and transport authority, in whose area of jurisdiction the toll road is situated;
  - (b) may differ in respect of— 25
    - (i) different toll roads;
    - (ii) different vehicles or different categories of vehicles driven or used on a toll road;
    - (iii) different times at which any vehicle or any vehicle of a particular category is driven or used on a toll road; and
    - (iv) different categories of road users, irrespective of the vehicles driven or used by them; 30
  - (c) must be made known by the MEC by notice in the *Provincial Gazette*;
  - (d) will be payable from a date and time determined by the MEC on the recommendation of the Department, and must be specified in the notice contemplated in paragraph (c); and 35
  - (e) a determination in terms of this subsection comes into effect 30 days after the date of publication thereof.

#### **Operation of toll roads and charging of toll by authorised persons**

4. (1) The MEC may, after consultation with the Member of the Executive Council responsible for financial matters in the Province, enter into an agreement with any person, institution, body or municipality, in this section called the authorised person, in terms of which the authorised person is, for a specified period and in accordance with the terms and conditions of the agreement authorised— 40
- (a) to finance, plan, design, construct, maintain or rehabilitate a toll road or proposed toll road; or 45
  - (b) to operate, manage and control a toll road, or toll plaza at any toll road or proposed toll road; or
  - (c) to construct or erect a toll plaza and any facilities connected therewith on a toll road for the purpose of charging and collecting toll in accordance with subsection (3). 50
- (2) Despite section 3 an agreement concluded under subsection (1) may provide that the authorised person will be entitled, subject to subsections (3) and (4), to charge and collect toll on behalf of the MEC or for own account—
- (a) on the toll road specified in the agreement;
  - (b) during the period so specified; and 55
  - (c) in accordance with the provisions of the agreement only.
- (3) Where the agreement provides for any of the matters mentioned in section 3(1)(a), (b), (c), (d) and (e), the MEC remains responsible for the duties imposed on the MEC by that section.

(4) The amount of the toll that may be charged by an authorised person as well as any rebate or exemption on that amount or any increase or reduction thereof, will be determined in the manner provided for in section 3(3).

### **Powers of the MEC**

5. (1) The MEC is responsible for all strategic planning with regard to the Province's toll roads system, as well as the declaration, planning, design, financing, construction, operation, management, control, maintenance and rehabilitation of toll roads for the Province and all matters connected therewith. 5

(2) In addition to the MEC's main powers and functions under subsection (1) or otherwise under this Act, the MEC may— 10

- (a) with the approval of the Member of the Executive Council responsible for financial matters in the Province participate in ventures, involving toll roads or other roads, jointly with road authorities, or any private persons, institutions or bodies, who have or will have ownership or control of or may otherwise be involved with toll roads and other roads; 15
- (b) for purposes of this Act exercise the powers in relation to provincial roads conferred on the MEC by virtue of the Infrastructure Act;
- (c) use any portion of a toll road that is not immediately required for traffic purposes, for any purposes which the MEC considers fit, subject to this Act; and 20
- (d) do anything that the MEC may deem necessary or expedient for the efficient administration of this Act.

### **MEC may pay costs to municipalities**

6. The MEC, in his or her discretion and on any conditions he or she considers fit, may pay the costs or part of the costs incurred by a municipality in connection with a municipal road or other works which, by agreement between the MEC and the municipality, may have become necessary as a result of the construction, maintenance, operation or rehabilitation of a toll road. 25

### **Agreement with SANRAL**

7. The MEC may enter into an agreement with the SANRAL which agreement may provide for— 30

- (a) the Department and the National Roads Agency to establish a joint authority to perform part of or all the strategic planning with regard to the Province's toll roads system including the planning, design, financing, construction, operation, management, control, maintenance and rehabilitation of toll roads in the Province; 35
- (b) the performance by the National Roads Agency of any task or function within its power under the South African National Roads Agency Limited and National Roads Act 1998 (Act No. 7 of 1998) on such terms and conditions as may be mutually agreed upon; and 40
- (c) the MEC to act as an authorised person contemplated in section 8 of South African National Roads Agency Limited and National Roads, 1998 (Act No. 7 of 1998), with regard to any national toll road situated within the Province.

### **Delegation and exercise of power**

8. (1) The MEC may in writing delegate any power or function except those powers imposed on the MEC in this section and sections 2, 3 and 11, conferred on the MEC by this Act to— 45

- (a) any official of the Department;
- (b) a municipality;
- (c) a transport authority; or 50
- (d) a person, institution or body contemplated in section 4.

(2) The terms and conditions of any delegation under subsection (1) shall be determined by agreement between the MEC and such person or authority as envisaged under subsection (1) and shall be in writing.

(3) The MEC will not be divested of any power nor be relieved of any function or duty he or she may have delegated.

(4) The delegation may be given together with the power to subdelegate, on and subject to any conditions so determined.

(5) The MEC, may at any time— 5

(a) amend or revoke a delegation made under this section;

(b) withdraw any decision made by the delegatee with regard to a delegated matter and decide the matter himself or herself.

### **MEC may institute legal proceedings**

9. The MEC may institute legal proceedings to recover toll moneys owed by any person liable for toll in terms of this Act. 10

### **Limitation of liability.**

10. The MEC, an employee of the Department, any person acting on behalf the MEC or any person who operates or constructs a toll road, will not be liable for any damage or loss suffered by any person through the use of a toll road other than the roadway or as a result of the closure or deviation of a toll road under this Act. 15

### **Regulations**

11. (1) The MEC, may make regulations that are not inconsistent with this Act—

(a) about traffic on a toll road or the use or protection of a toll road;

(b) about the implementation and use of electronic toll collection on toll roads and any matter ancillary thereto; 20

(c) prescribing a fee to be paid for any application, authorisation, approval, permission or exemption provided for in this Act;

(d) in relation to anything which in terms of any provision of this Act may be prescribed or determined by regulation; and 25

(e) generally to prescribe such matters as he or she may deem necessary or expedient for the efficient administration of this Act.

(2) Different regulations may be made under subsection (1) for different toll roads, and the regulations may provide that a person who contravenes or fails to comply with any particular regulation will be guilty of an offence and liable on conviction to a term of imprisonment or a fine not exceeding that prescribed in the regulations: Provided that the maximum period of imprisonment may not exceed six months: further provided that any fine will be calculable in accordance with section 1(1)(a) of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991). 30

### **Law enforcement on toll roads** 35

12. (1) The MEC may authorise any traffic officer registered as such under the applicable road traffic legislation to enforce the provisions of this Act and perform such law enforcement functions associated therewith.

(2) The MEC may enter into an agreement with—

(a) any municipality, in terms of which the municipality is authorised, and undertakes, to perform the law enforcement functions mentioned in subsection (1), on a toll road within the municipal area, of that municipality through employees of the municipality designated or appointed by it for that purpose; and 40

(b) any other law enforcement agency, in terms of which such agency is authorised and undertakes to perform the law enforcement functions mentioned in subsection (1) on the toll roads in the Province, or any of those toll roads as specified in the agreement, through employees of the agency designated or appointed by the agency for that purpose, subject to the conditions determined in the agreement. 50

### **Impoundment of vehicles**

13. (1) A person contemplated in section 12 may under prescribed conditions and in the prescribed manner on the authority of a warrant issued in terms of subsection (3),

impound a vehicle which is used in or is on reasonable grounds believed to be used in the commission or suspected commission of an offence in terms of this Act.

(2) A person contemplated in section 12 has the same powers and functions conferred on a police official in the Criminal Procedure Act, 1977 (Act No. 51 of 1977) relating to the impoundment, release and forfeiture of such a vehicle. 5

(3) A magistrate or judge may on the request of a person contemplated in clause 12, issue a warrant for purposes of subsection (1).

### **Offences**

14. Any person liable for toll in terms of this Act, and who refuses or fails to pay the amount of toll that is due— 10

- (a) is guilty of an offence and punishable on conviction with imprisonment for a period not exceeding six months or a fine, or with both such imprisonment and the fine;
- (b) is liable, in addition, to pay to the MEC a civil penalty as prescribed; and
- (c) is liable to pay such toll that is due upon conviction of an offence under this Act. 15

### **State bound by this Act**

15. This Act binds the State.

### **Short title and commencement**

16. This Act is called the Gauteng Toll Roads Act, 2003, and comes into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*. 20

## **GAUTENG TOLL ROADS BILL, 2003**

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

### **1. REASONS FOR THE BILL**

The Gauteng Toll Roads Bill (GTRB) sets out the required legal provisions for the introduction of user charging on Provincial toll roads. It is necessary for Gauteng to have its own toll roads legislation in terms of which the MEC may declare some portions of the Provincial Road Network as toll roads. This development is necessary in order to cooperate with South African National Roads Agency Limited in the further development of the road network which lies inside this Province. The Bill also allows the Province to enter into an agreement with SANRAL regarding the implementation of the toll road network. The Bill also ensures that proper consultation is undertaken with local municipalities regarding the declaration of toll roads. The Provincial Road Network will be developed in such a way through the introduction of such toll legislation that it will be able to meet the growing economy of the Province and the transportation needs of its people.

### **2. ENVIRONMENTAL IMPACT**

This Bill has no environmental impact.

### **3. FINANCIAL IMPLICATIONS OF THE BILL**

It is envisaged that the private sector will be utilised as the concessionaire in the implementation of the toll roads strategy. Further, tolls are a type of user charge and therefore there is no specific financial implication that needs to be highlighted in terms of this Bill.

### **4. COMMENTS RECEIVED AND SOLICITED**

Over the last three years or so, consultation has occurred with the various local authorities in the Province concerning the GTRB and the principles of tolling major provincial roads has been accepted by the relevant authorities.

### **5. CLAUSE-BY-CLAUSE EXPLANATION**

Clause 1: This clause contains the Definitions relevant to the Act.

Clause 2: This clause states that the MEC may declare any new provincial road to be a toll road. However, in the case of an existing provincial road the MEC may only declare such a toll road in consultation with the Premier of the Province.

Clause 3: This clause states how the charging and collection of toll is to be carried out, allowing the MEC to grant rebates or full or partial exemptions in respect of categories of vehicles or for vehicles used on the toll roads during a specified time. The amounts of toll shall be determined by the MEC on the recommendation of the Department after consultation with relevant municipalities in whose area of jurisdiction the toll road is situated.

Clause 4: This clause describes how authorised persons can operate toll roads and charge tolls. A toll concessionaire would be appointed in terms of this clause.

Clause 5: The powers of the MEC in respect of toll roads are explained in this clause. The MEC is responsible for all strategic planning with regard to the Province's toll roads system as well as the declaration, planning, design, financing, construction, operation, management, control, maintenance and rehabilitation of the toll roads.

Clause 6: Consultation must occur with municipalities concerning the declaration of toll roads.

Clause 7: The MEC may enter into an agreement with SANRAL regarding the implementation of the toll road strategy including the division of responsibility between the two authorities.

Clause 8: This clause allows the MEC to make certain delegation of powers in terms of the Act. 5

Clause 9: The MEC is allowed to institute legal proceedings to recover outstanding toll monies in terms of this clause.

Clause 10: This clause limits the rights of other bodies to bring legal proceedings in regard to toll roads against the MEC, an employee of the Department, any person acting on behalf of the MEC or any person who operates or constructs a toll. 10

Clause 11: This clause sets out the areas upon which the MEC may make regulations.

Clause 12: The MEC may authorise provincial traffic law enforcement officers to perform certain functions on toll roads and agreements may be entered into with other enforcement agencies to perform this function. 15

Clause 13: This allows for the impoundment of vehicles, which have been used in the committal of an offence on toll roads.

Clause 15: This clause indicates the offences that may be imposed on persons who infringe the Act.

Clause 16: The State is bound by the Act. 20

Clause 17: This clause gives the short title of the Act and states that the Premier can determine the date for the coming into operation of this piece of legislation.



