

REPUBLIC OF SOUTH AFRICA

**THE SOUTH AFRICAN NATIONAL
ROADS AGENCY LIMITED
AND NATIONAL ROADS
AMENDMENT BILL**

*(As introduced in the National Assembly; (proposed section 76); (explanatory
summary of Bill published in Government Gazette No. 40500 of 15 December 2016)
(The English text is the official text of the Bill)*

(MR MSF DE FREITAS, MP)

[B 20—2017]

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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 South African National Roads Agency Limited and National Roads Act, 1998, so as to impose a duty on the South African National Roads Agency; to identify an alternative route to every road declared a toll road; to compel the South African National Roads Agency to consult with the Premier of a Province and with the Municipal Council, before declaring a national road a toll road; to provide for a provincial referendum where a reasonable threshold of objections against a toll road were received; and to provide for matters connected therewith.

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

Amendment of section 27 of Act 7 of 1998, as amended by section 3 of Act 3 of 2013

1. Section 27 of The South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998), is hereby amended— 5

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

“*(b)* the Agency in writing—

(i) has requested the Premier in whose province the road proposed as a toll road is situated, to comment on the proposed declaration and any other matter with regard to the toll road (and particularly, as to the position of the toll plaza) within a specified period (which may not be shorter than 60 days); **[and]** 10

(ii) has given every municipality in whose area of jurisdiction that road is situated the same opportunity to so comment; 15

(iii) has submitted the proposal to the provincial legislature in whose province the road proposed as toll road is situated and received a majority vote in favour of the proposed declaration from the members of that provincial legislature; and 20

(iv) has identified an alternative route of comparable distance which must—
(aa) be a tar road;
(bb) be maintained adequately; and
(cc) be suitable for increased usage;” 25

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

- “(bA) the Agency, in co-operation with the municipality contemplated in subsection (4)(b)(i) and the province in which the proposed toll road is situated, has performed a socio-economic, environmental and traffic impact assessment pertaining to the proposed toll road which must be submitted to the Minister and made available to the province and every municipality contemplated in subsection (4)(b);”;
- (c) by the insertion in subsection (4) of the following paragraph after paragraph (bB):
- “(bC) the Agency has, after receiving the comments contemplated in paragraphs (a) and (b), consulted with the Premier of the province in which the proposed toll road is situated and the Municipal Council of a municipality in whose area of jurisdiction that road is situated;”;
- (d) by the substitution in subsection (4) for paragraph (c) of the following paragraph:
- “(c) the Agency, in applying for the Minister’s approval for the declaration, has forwarded its proposals in that regard to the Minister together with a report on the comments, **[and]** representations that have been received (if any), the assessments conducted in terms of paragraph (bA) and the consultations conducted in terms of paragraph (bC). In that report the Agency must indicate—
- (i) the outcome of the assessment contemplated in paragraph (bA);
 - (ii) the extent to which any of the matters raised in those comments **[and]**, representations, assessments and consultations have been accommodated; and
 - (iii) the steps proposed to mitigate against the impact or likely impact on alternative roads with regard to maintenance and traffic management that may result from the declaration contemplated in subsection (1);”;
- (e) by the insertion after subsection (4) of the following subsections respectively:
- “(4A) The Premier in whose province the road proposed as a toll road is situated must—
- (a) provide 30 days after the consultation process contemplated in subsection (4)(b)(i), for objections against the proposed declaration to be filed in his or her office; and
 - (b) call for a referendum if objections against the proposed declaration received reach a threshold of 55% or above, within six weeks of the period referred to in paragraph (a), so that interested persons in that province may vote on such declaration.
- (4B) The outcome of the referendum contemplated in subsection (4A) must be reported to the Minister by the Premier.”

Short title and commencement

2. This Act is called The South African National Roads Agency Limited and National Roads Amendment Act, 2017, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN
NATIONAL ROADS AGENCY LIMITED AND NATIONAL ROADS
AMENDMENT BILL, 2017**

1. PURPOSE OF BILL

- 1.1 The purpose of The South African National Roads Agency Limited and National Roads Amendment Bill (“the Bill”), is to amend The South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) (“the Act”), in order to address the public outcry which arose as a result of the implementation of the Gauteng Freeway Improvement Project. Because the manner in which the public consultation process was conducted on this project was not to the satisfaction of the public, there is a need to strengthen consultation with the Premier of a province and the municipal Council wherein the road to be tolled lies, by requiring a majority vote in favour of the proposed declaration in the relevant provincial legislature.
- 1.2 Furthermore, the Bill seeks to require that for every toll road, an alternative road be established and continuously maintained so as to allow those who may not be able to afford the tolls to reach their desired destination. This Bill seeks to place further check and balances on the declaration of a toll road and ensure that the general public is not further financially burdened by the declaration of a toll road by making an alternative and affordable route available.

2. CONTENTS OF BILL

CLAUSE 1

- 2.1 Clause 1 of the Bill seeks to amend section 27 of the Act by inserting in paragraph (4) a subparagraph which requires that before the Agency declares a road a toll road, a majority vote in the relevant provincial legislature in favour of the proposal must be obtained. A further subparagraph is inserted that requires the Agency to first identify an alternative route of comparable distance, which must be a tar road, be maintained adequately, and be suitable for increased usage. The Agency is further required to consult with the relevant provincial Premier and municipal council after receiving the comments on the proposal to declare a toll road, in terms of the Act.
- 2.2 Section 27 is further amended to require that when applying for the Minister’s approval for the declaration of a toll road, in addition to the report on the comments and representations, the Agency forwards a report on economic viability assessment, an environmental impact assessment and the consultations conducted, to the Minister. In that report the Agency must indicate the extent to which any of the matters raised in those comments, representations, assessments and consultations have been accommodated in proposals.
- 2.3 The Bill further requires that before a road can be declared a toll road the Premier in whose province the road proposed as a toll road is situated must provide 30 days after the consultation process for objections against the proposed declaration to be filed in his or her office. The Premier must also call for a referendum if a threshold of 55% and above objections against the proposed declaration is received. The referendum must be called within six weeks so that interested persons in that province may vote on such declaration. The outcome of that referendum must be reported to the Minister.

3. FINANCIAL IMPLICATIONS FOR STATE

None

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

None

6. CONSTITUTIONAL IMPLICATIONS

None

7. PARLIAMENTARY PROCEDURE

- 7.1 The Parliamentary Legal Adviser is of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution, 1996, since it contains provision that affect a schedule 4 legislative competency in a substantial manner. The content of the Bill affects the interests, concerns and capacities of provinces.
- 7.2 The Parliamentary Legal Adviser is of the opinion 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.

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