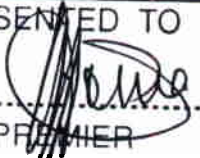

GAUTENG PROVINCIAL LEGISLATURE

**GAUTENG TRANSPORT
INFRASTRUCTURE
AMENDMENT ACT, 2003**

ASSENTED TO

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PREMIER

ENGLISH TEXT SIGNED BY THE PREMIER

ASSENTED TO ON 06/01/2004.

CERTIFIED CORRECT AS PASSED BY
THE GAUTENG PROVINCIAL LEGISLATURE

SIGNED



SPEAKER

DATE

17/12/2003

No 6, 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.
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ACT

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—
- (a) by the insertion of the following definition after the definition of 'provincial road':
- "public railway transport service" means a public transport service which is a rail service as contemplated in section 1(Lxiii)(f) of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000)."
- (b) 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]**
- (c) 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."
- (d) by the insertion of the following definition after the definition of "railway line":
- "railway system" includes the railway lines with rail reserves and stations, and the rolling stock forming part of the relevant system.

- (e) by the insertion of the following definition after the definition of 'road way':
"rolling stock" means a vehicle that is able to operate on a railway, irrespective of its capability of independent motion.
- (f) by the insertion of the following definition after the definition of "State":
"station" means a railway station or a railway passenger terminal and includes— 5
 (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; 10
 (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 15
 (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 the Gauteng Planning and Development Act, 2003 (Act No. 3 of 2003) and any other relevant planning legislation;" 20
- (g) by the substitution for the definition of 'transport infrastructure' of the following definition: 25
"transport infrastructure" includes provincial roads, railway lines, railway systems, parking areas and sites, bridges, tunnels, resting places, stopping places, weighbridges, stations, sidings and other traffic control centres and facilities for the use of motor vehicles, buses, taxis or [trains] rolling stock and [their] passengers, and includes similar or related structures, and all immovable property and servitudes, including commercial facilities, used in connection with such infrastructure;" 30

Substitution of section 6 of Act 8 of 2001

2. The following section is hereby substituted for section 6 of the principal Act: 35
- "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. 40
- (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. 45
- (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; 50
- (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). 55
- (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

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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

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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 (j) of subsection (1) of the following:

"(j) any other person or body; [in this section referred to as "the other party]"

Insertion of section 51A in Act 8 of 2001

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8. The following section is hereby inserted in the principal Act after section 51:

"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, planning, design, operation, management, control, maintenance or supervision of a railway system or future railway system or a railway line and the provision of public railway transport services 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 which may include conditions in respect of—

(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;

(c) any delegation contemplated in section 56;

(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;

(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;

(g) the provision of public railway transport services;

(h) the extent of capital, patronage guarantees, funds, subsidies, payments and security to be provided or made available by the Province for or related to the establishment and operation of the railway system and provision of services contemplated by the contract or contracts; and

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(i) any other matter reasonably necessary for, or incidental to, the implementation of the contract or contracts.

(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. 5

(3) A contract contemplated by subsection (1) may provide that a person who is a party to the contract is entitled to charge and collect fares for transport services, as determined by the MEC, in the manner determined in the contract, and to earn other revenue arising from or related to: 10

- (a) the rights acquired in terms of the contract or contracts; or
- (b) the railway system."

Amendment of section 52 of Act 8 of 2001

9. Section 52 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection: 15

"(1A) Any person who fails or refuses to pay the applicable fare for using a public railway transport service commits an offence."

Short title

10. This Act is called the Gauteng Transport Infrastructure Amendment Act, 2003. 20