

The National Land Transport Act

The long-awaited National Land Transport Act was signed into effect by the President on 3 April 2009. It deals comprehensively with all aspects of transport, including the provision, regulation and funding of public transport and the taxi industry. It is the product of numerous efforts over the past decade to outline each sphere of government's responsibilities. Importantly, it envisages a significant role for municipalities.

The roles of national and provincial governments

The national government is responsible for formulating national transport policy and strategy. In so doing, the national department of transport must liaise with other government departments whose responsibilities impact on transport issues. National government is also responsible for coordinating, capacitating and monitoring provinces in relation to land transport functions, and for regulating tourist transport and interprovincial land transport.

The provincial sphere of government, on the other hand, is responsible for the formulation of provincial land transport policy. Provinces, which are required to give special attention to rural areas and less capacitated municipalities, are mandated not only to coordinate transport between municipalities but also to assist struggling municipalities (ie those that lack the necessary staff or resources) in meeting their responsibilities and performing their functions and duties with regard to land transport. The support of the provincial government can come in the form of either direct implementation or assistance. The national minister is obliged to monitor, within the framework of the Constitution and the Intergovernmental Relations Framework Act, all provincial land transport policies and planning to ensure that they comply with and fall within the framework of the national transport policy.

Responsibilities of local government

As is evident from the long list of functions that the Act outlines for local government, it is vested with significant responsibilities in the transport sector. Based on national and provincial guidelines, local government is responsible for developing land transport policy and strategy within its jurisdiction.

According to the Act, each municipality is a planning authority tasked with not only preparing and implementing transport plans for its area, but also monitoring its performance in achieving its goals and objectives. As a planning authority, a municipality has to prepare integrated transport plans. Other mandates include:

- performing the constitutional transport functions listed in Parts B of Schedule 4 and 5 of the Constitution;
- supplying directions to the entities responsible for the granting, renewal, amendment or transfer of operating licences; and
- performing any other land transport-related functions assigned to it in terms of the Constitution and the Act.

If a municipality is assigned with the operating licence function, it must establish a division within its administration to perform this function. The division must consist of dedicated officials that have specialised knowledge, training or experience

in public transport or related matters, appointed on either a full-time or a part-time basis. The minimum qualifications or experience required from such officials is determined by the national minister.

A municipality, as a planning authority, also has the option of establishing a land transport advisory board, comprising representatives from government and the private sector. The function of such a board is to advise the municipality in relation to land transport matters. The organisational rules of the board, including appointment and qualification for membership, procedures and other related matters, are determined by the national minister.

Integrated transport plans

All municipalities must prepare and submit integrated transport plans for a five-year period. The transport MEC determines from which financial year this five-year period commences. The plan must be in line with the requirements that the national minister, in consultation with the MEC, may prescribe. In addition to such requirements, the MEC can also prescribe the contents of the plan. The Act explicitly states that the plan must include routes for the transporting of dangerous goods by road through its area.

Although each integrated transport plan must be submitted for approval to the relevant MEC, the power of the MEC is

limited. The MEC may only monitor compliance with provincial transport plans and those policies that have cross-boundary dimensions involving at least two municipalities or institutions. The Act, however, specifically requires a municipality to submit those aspects of the plan that relate to commuter rail to the national minister for approval.

Operating licences

The national public transport regulator and provincial regulatory entities are responsible for issuing operating licences that allow individuals to operate road-based public transport services. This power can, however, be assigned to municipalities. Only municipalities to which the function has been assigned can issue operating licenses. The national and provincial public transport regulators are required to inform all municipalities about applications for operating licences to operate services in their respective areas. A municipality must give direction with regard to an application for a service in its area, based on its integrated transport plan, indicating whether there is a need for the service on the route or in the area. This does not include a tourist transport service or charter service and a contracted service.

In cases where a municipality is assigned to serve as a contracting authority and has concluded negotiated contracts, subsidised service contracts or commercial service contracts



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with operators, it must issue those operators with an operating licence for each vehicle involved in the contract. A municipality can also be assigned the function of dealing with applications for operating licences for non-contracted services. A non-contracted public transport service is one that is not run in terms of a commercial service contract, a subsidised service contract or a negotiated contract.

Intermodal planning committees

If a municipality is establishing an integrated public transport network or has significant passenger rail services in its area, it is required to establish an intermodal planning committee. Such a committee consists of technical officials and representatives of the rail operator, other public transport modes, users and organised business. Its major task is to coordinate public transport between the modes, enabling consumers to use both rail and road transport.

Inter-municipality forums

The Act also provides for the establishment of an inter-municipality forum where there are significant transport movements between two or more adjacent municipalities. The forum, which must be established in accordance with the Intergovernmental Relations Framework Act, helps to coordinate the municipalities' functions and ensure that their integrated transport plans take account of such movements. The municipalities concerned can also opt to establish a multi-jurisdictional service utility in terms of Part 4 of Chapter 8A of the Municipal Systems Act.

Financing municipal land transport

Establishing an appropriate and sustainable framework for funding the transport sector has been one of the main challenges facing many municipalities. This problem recently prompted the Financial and Fiscal Commission to suggest the establishment of a

dedicated road funding component in the local government equitable share formula.

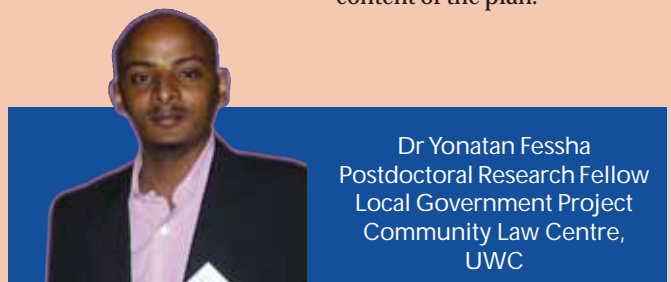
The Act mandates every municipality to establish a municipal land transport fund in order to finance its integrated public transport network. The fund will consist of money appropriated by the national minister and the MEC, user charges collected from different sources, interest on invested cash balances belonging to the fund and donations and contributions from any other source, including foreign aid agencies. A municipality is under an obligation to keep proper accounts of all money accruing to or paid out of that fund, which must be audited by the Auditor-General. Expenditures from the fund require prior approval by the municipal council. The fund is also subject to the regulation of the Municipal Finance Management Act, and the Minister of Finance may make regulations clarifying the application of that Act to the fund.

Comment

At the centre of the many challenges facing the transport sector has been the institutional fragmentation of responsibility for planning, regulating and managing public transport systems across the three spheres of government. The Act now clearly outlines the responsibilities of each sphere. With the implementation of the Act, it is hoped that institutional problems of the sector will fall away.

The Act should also be noted for placing local government at the centre of the battle to address the challenges of the transport sector. By designating municipalities as planning authorities, the Act vests local government with significant responsibilities for the execution of land transport functions. This is not only consistent with the principle of the Constitution that mandates the assignment of powers to the lowest level of government, but also recognises the important role that local government can play in addressing the challenges of the transport sector.

However, the fact that the Act allows the MEC to prescribe the contents of the integrated transport plan of municipalities seems over-prescriptive. It begs the question whether a local plan is necessary if the MEC is, after all, entitled to prescribe the content of the plan.



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