

Bringing the NLTTA in line with the new local government dispensation

The Portfolio Committee on Transport convened a public hearing on the implementation of the National Land Transport Transition Act (NLTTA) at Parliament on 4 September.

Attended by representatives of the taxi industry, an eThekweni municipality representative and one from SALGA, it was part of an ongoing Committee process to gauge the progress of government, municipalities and other role players in implementing the NLTTA. SALGA's submission can be summarised as follows:

- The function of 'public transport', as defined in the NLTTA, is an assignment from national government to local government.
- The assignment of functions to local govern-

ment from national government must take place within the framework set out in section 9 of the Municipal Systems Act.

- Adequate funding must be set aside to enable municipalities to perform the assigned functions.
- Targeted capacity building programmes must be started to enable municipalities to perform the assigned functions effectively and efficiently.
- The municipal function of 'municipal public transport', as it appears in Schedule 4B to the Constitution, requires urgent definition.

Public transport

Assignment of a national function to local government

'Public transport service' is defined in the NLTTA as a service for the carriage of passengers by road or rail and includes mini-bus taxis, long-distance services and rail services. It must be noted that

national and provincial governments are carrying out the regulation of all the services mentioned herein. These services are carried out across the current municipal boundaries.

'Municipal public transport' is currently undefined but refers, at the very least, to transport services either operated or regulated by a municipality. It could include other transport services assigned to it by provincial or national government. Such transport would be confined to the area of jurisdiction of a particular municipality.

SALGA believes that no type of public transport that is currently regulated or operated at a national or provincial level would fall under the definition of 'municipal public transport'. To become a municipal function, it must be assigned by to a municipality by the relevant authority (national or provincial).

The assignment of functions to local government

Apart from local government's 'original' functions (Schedule 4B and 5B of the Constitution), a municipality has authority over functions assigned to it by national or provincial government legislation. The Constitution provides that they can assign functions to local government in *general*, or to *specific* municipalities. Chapter 3 of the Systems Act further elaborates the legal regime for assignments and in sections 9 and 10 it also distinguishes between assignments to municipalities *generally* and to *specific* municipalities.

The Systems Act stipulates requirements for general assignments by national legislation. Before introducing the Bill in Parliament, the Minister must:

- consult the Minister responsible for local government, the national Minister of Finance, and organised local government nationally (s 9(1)(a));
- request and consider an assessment of the financial implications of the legislation by the Financial and Fiscal Commission (s 9(1)(b)).
- assess whether the assignment imposes a duty on the municipalities concerned;
- assess whether the duty falls outside Schedule 4B and 5B to the Constitution; and
- assess whether performance of the duty has financial implications for the municipalities concerned (s 9(3)).

key points

- There is a dire need for national funding for public transport.
- The function of 'municipal public transport' needs urgent definition.

If the last three conditions are met, the MEC must 'take appropriate steps to ensure sufficient funding, and capacity building initiatives as may needed, for the performance of the assigned function or power by the municipalities concerned' (s 9(3)).

Preventing an unfunded mandate

The legislative framework dealing with assignments makes it clear that sourcing adequate funding to sustain an assigned function is of paramount importance.

The Financial and Fiscal Commission is the only agency that can perform an investigation upon which the funding of such a function can be based.

It is clear from the implementation of the NLTTA in the past two years that there is a chronic lack of funding, which has hamstrung most transport regulatory processes in the municipalities. The Palmer Development Group (PDG) report accurately reflects the extent of funding difficulties, which impact on human resources, capacity building and funding for public transport.

One of the real issues that any amendments to the NLTTA must address is how national and provincial resource allocations can be directed to municipalities or transport authorities to enable them to fulfil their obligations in terms of the Act. In other words, the funding of the mandate, as set out in the Act, must be formalised and put into effect as soon as possible.

Ensuring capacity building

It is apparent from the law dealing with assignments that a municipality's ability to perform the function must be measured and appropriate capacity building

mechanisms must be put in place for the assignment to take effect. Implementation of the NLTTA over the past two years shows that very real capacity constraints are prevalent in the core cities, let alone the rest of the transport authorities. The PDG report reflects a lack of capacity to monitor and enforce compliance by the operators across all sectors of the transport industry, including operators, enforcement staff, and municipal bodies or authorities, and in non-metro areas.

Amendments to the NLTTA must also address the important issue of building capacity in municipalities or transport authorities so they can fulfil their obligations in terms of the Act. A national capacity building programme is needed, aimed at enhancing service delivery in the transport sector as a whole, but more particularly within municipalities.

Defining 'municipal public transport'

As mentioned, there is a critical need for an appropriate definition of 'municipal public transport' to bring certainty to the functions for which a municipality must take responsibility, those

that fall outside the municipality's area of responsibility, and those that are, in fact, assignments from the national or provincial government. Any amendments to the NLTTA must include a definition of 'municipal public transport'. SALGA suggests that the Portfolio Committee takes the following proposal for an appropriate definition under advisement:

'Municipal public transport means the regulation and control, and where applicable, the establishment and operation of services for the carriage of passengers, whether scheduled or unscheduled, operated on demand along a specific route or routes within the area of jurisdiction of the municipality.'

The transitional nature of the Act poses a problem for the development of a coherent land transport regime. It is important that the role of municipalities in land transport matters is properly conceived. It is only in that context that proper planning can take place, in respect not only of public transport but also of municipal public transport.

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