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ECONOMIC REGULATION OF TRANSPORT BILL

November 2020

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INTRODUCTION

- The Economic Regulation of Transport Bill – B1 – 2020 was introduced in parliament in December 2019
- The Bill was advertised for public comment in July 2020
- More than 200 comments were received
- Public hearings were held in October 2020



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Economic Regulation of Transport Bill

ECONOMIC REGULATION OF TRANSPORT BILL (B1-2020)

BUSINESS OF PARLIAMENT » LEGISLATION » BILLS CURRENTLY IN PARLIAMENT » BILL

To consolidate the economic regulation of transport within a single framework and policy; to establish the Transport Economic Regulator; to establish the Transport Economic Council; to make consequential amendments to various other Acts; and to provide for related incidental matters.

B1-2020
NA

STAGE

Intro <small>31-01-2020</small>	PC <small>PORTFOLIO COMMITTEE</small>	NA <small>NATIONAL ASSEMBLY</small>	SC <small>SELECT COMMITTEE</small>	NCOP <small>NATIONAL COUNCIL OF PROVINCES</small>	SENT <small>SENT FOR ASSENT</small>	ASS (ATC) <small>ASSENTED</small>
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PDF
VIEW BILL


If you would like to read or download the latest version of the bill, please click below.

READ

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POLICY

- Memorandum:
 - Effective government oversight and economic regulation is needed to ensure technical, operational and pricing efficiency in the transport sector and to reduce the costs and improve access to the sector
 - Dedicated regulatory functions have been developed and implemented in the ports and aviation sectors
 - Currently little economic regulation of road concessions
 - little or no economic regulation in the rail sector - competition in these sectors is currently limited
 - In the ports terminals sector, while a dedicated regulatory structure exists, it is owned by the same entity which operates a number of terminals



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Economic Regulation of Transport Bill

POLICY

- To achieve an efficient and cost-effective transport system in order to support economic growth and meet the country's social goals, it was considered imperative to consolidate, rationalise and, where necessary, redesign economic regulation in the transport sector into a single multi-modal regulator
- Department of Transport (DOT) aims to achieve a technically competent, independent and adequately resourced regulator to improve economic outcomes in the transport sector



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PURPOSE

- Clause 4 establishes a framework for the economic regulation of transport and defines the scope of the Bill
- All markets, entities, facilities or services in the transport sector which were subject to economic regulation in terms of listed legislation will continue to be regulated
- Establish -
 - Transport Economic Regulator
 - Transport Economic Council



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REGULATOR

- Primary technical, administrative and enforcement regulator
- Responsible for carrying out education, research, price control approval, access request approval, investigation of complaints and enforcement.
- Clause 11 gives the Regulator powers to regulate prices in the transport sector
- Regulator - discretion to tailor the price-setting method used to the needs of each sector.
- The goal of price regulation - ensure that normal levels of profit are achieved by regulated entities
- Levels of profit which keep the regulated entity sustainable and continue to encourage investment, but which do not reflect monopolistic pricing or inefficiency in operations.



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REGULATOR

- ENFORCEMENT –
 - Investigate complaints and monitor regulated sectors, services and facilities for compliance
 - Issue a compliance notice to a person or association whom the Regulator believes has engaged in prohibited conduct
 - Offence to fail to comply with a compliance order
 - Refer alleged offences in terms of the Act to the National Prosecuting Authority
 - Is given substantial powers in support of investigation including the right to subpoena and the authority to enter and search under warrant



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GOALS

- The goal of economic regulation is to determine the right price for goods and services, which mirrors a competitive outcome
- Regulator needs to have access to detailed, high quality information
- If Regulator is not provided with the powers needed to uncover this information, it is too easy for regulated entities to withhold data and thus prevent the achievement of good regulatory outcomes.
- Courts are responsible for the adjudication of all matters relating to alleged offences in terms of the Act, interpretation of law, and issuing of declaratory orders
- and consent orders
- Bill makes provision for criminal and administrative sanctions
- Criminal sanctions relate to offences and the administrative sanction of a directed price control reduction relates to prohibited conduct by a regulated entity.



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DEFINITIONS

- **“price control”** means a method for setting the price that can be charged, or revenue that can be earned, by a regulated entity for the use of or access to its assets, facilities or services, referred to in section 11(2);
 - **“regulated entity”** means an entity to which this Act applies in terms of—
 - (a) section 4(1); or
 - (b) a declaration contemplated in section 4(2);
- “service”** means activity involved in the transportation of persons or goods within the transport sector;
- “transport sector”** means shipping and ports, aviation, rail or road transport



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DEFINITIONS

- **“tariff”** means any charge, fee, toll, fare or other amount that may be imposed by a regulated entity for the use of, or access to, any transport service or facility
- **“economic regulation”** means the regulation of markets, entities, facilities or services within the transport sector by determining—
 - (a) the price control for access to facilities or for services;
 - (b) access to facilities or services; and
 - (c) service levels and service conditions;
- **“facility”** means any physical infrastructure used for the transportation of persons or goods within the transport sector;
- **“goods or services”**, when used with respect to particular goods or services, includes any other goods or services that are reasonably capable of being substituted for them, taking into account ordinary commercial practice and geographical, technical and temporal constraints;



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TARIFFS

- Clause 11.
 - (1) Every regulated entity is subject to price regulation in accordance with a price control determined by the Regulator.
 - (2) The price control for a regulated entity may comprise—
 - (a) a schedule of tariffs, charges, fees, tolls or other amounts that may be imposed by the regulated entity for the use of, or access to, any transport service or facility offered by that regulated entity;
 - (b) a limit on the total amount of revenue it may raise from the facilities and services offered by it;
 - (c) a limit on the return it may derive from the assets utilised by it to provide its facilities and services; or
 - (d) any other appropriate pricing method, including any combination of the methods contemplated in paragraphs (a) to (c).
 - (3) Each regulated entity must submit a proposal to the Regulator, requesting approval of a price control for the facilities and services offered by that regulated entity.



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SANRAL ACT – PROPOSED AMENDMENT

- Amendment of South African National Roads Agency Limited and National Roads Act
- Section 27 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) is hereby amended by proposed new subsection (3) -
“(a) is determined by the [Minister] Transport Economic Regulator in terms of Part A of Chapter 3 of the Economic Regulation of Transport Act, 2020, on the recommendation of the Agency;”.
- Section 28 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) is hereby amended by the addition of the following subsection:
“(5) The Transport Economic Regulator, established by section 29 of the Economic Regulation of Transport Act, 2020, may require an agreement contemplated in subsection (1) to make provision for periodic review by the Transport Economic Regulator, of the level of tolls charged in terms of the agreement.”.



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CONCLUSION

- The Portfolio Committee on Transport (PCOT) is processing the Bill so that it can be enacted very soon.
- The PCOT held public hearings on the Bill between 20 and 28 October 2020.
- The Bill is listed as one of the key projects in the Economic Reconstruction and Recovery Plan. Hence, the PCOT is fast tracking it.
- All amendments will be communicated via our UPDATE service – please inform our office if you do not wish to receive them

THANK YOU



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