

# **SALGA PRELIMINARY COMMENTS**

**ON**

## **THE NATIONAL LAND TRANSPORT AMENDMENT BILL [B 7 – 2016] AUGUST 2018**

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### **1. INTRODUCTION**

The South African Local Government Association (SALGA) would like to extend appreciation for the opportunity to comment on the National Land Transport Amendment Bill [b 7 – 2016]. We have the pleasure in submitting SALGA's preliminary comments on the Bill [b 7 – 2016]. Please note these are the preliminary comments and SALGA as organized local government, is requesting an opportunity to formally do a presentation to the Select Committee on Economic and Business Development, when the committee would be considering written submissions, during the in the month of September 2018.

### **2. BACKGROUND**

The National Land Transport Act, 2009 (Act No. 5 of 2009) ("the principal Act") was enacted to amongst others further the process of transformation and restructuring of the national land transport system initiated by the National Land Transport Transition Act, 2000 (Act No. 22 of 2000) ("the Transition Act") and provide for related matters. The principal Act has been in operation since December 2009 (some of its provisions since August 2009).

The current amendment process started in 2016, whereupon a bill was referred to parliament's Portfolio Committee for Transport on the 15 April 2016, approved in March 2018 and tabled at the National Assembly on 24th April 2018.

The National Land Transport Bill [B 7 – 2016], amongst others deals with the following;

- to provide for non-motorised and accessible transport;
- to bring the principal Act up to date with developments since its implementation;
- to provide for certain powers of provinces to conclude contracts for public transport services;
- to prescribe criteria and requirements for municipalities to enter into contracts for public transport services;
- to expand the powers of the Minister to make regulations and introduce safety measures;
- to amend other transport-related legislation to bring it into line; and
- to clarify or simplify various provisions or offer solutions to problems that have arisen since the implementation of the Act

### **3. CONTEXT FRAMING THE COMMENTS**

The comments below is guided by the vision, mission and values of the SALGA Strategic Plan 2017-2022. It is also in line with Goal two of SALGA strategy is – “Good governance and resilient municipal institutions”.

In the context of commenting on the National Land Transport Bill [B 7 – 2016], it is important to note the transport and related policy and legislative framework, namely:

- the Constitution of the Republic of South Africa (1996),
- The National Transport White Paper (1996),
- National Transport Master Plan 2050
- Public Transport Strategy and Action Plan,
- National Development Plan 2030, and the
- Integrated Urban Development Framework
- SALGA Devolution Framework 2016

The table below briefly reflects on the policy or legislation and respective reference.

#### **Relevant Policy or Legislation and Respective Reference**

<b>Policy or legislation</b>	<b>Respective relevance and reference</b>
Constitution of the Republic of South Africa (1996)	Schedule 4 Part A function (concurrent national and provincial legislative competence) - Public transport Schedule 4 Part B function (municipality has executive authority): - Municipal public transport
The National Transport White Paper (1996)	The principle of subsidiarity and devolution of public passenger

	transport functions, powers and duties to the lowest appropriate level of government is confirmed
National Land Transport Act 2009	Section 11(iv) empowers government to assign various transport functions to the most appropriate sphere of government
National Transport Master Plan 2050	8.6 Proposed Interventions In dealing with the issue of the role of the different spheres of government in passenger transport and the fragmented and uncoordinated delivery of passenger transport, it is proposed that devolution responsibilities be assigned to authorities as foreseen in the Constitution and prescribed by the NLTA
Public Transport Strategy and Action Plan	Supported the decentralization of land transport functions to ensure more integrated and efficient services
National Development Plan 2030	Devolve transport management to local government “...will help align the fragmented and conflicting interests of multiple transport authorities, each with separate funding sources and mandates. However,

	handing responsibility for transport over to municipal authorities will only succeed if it is accompanied by strengthening of institutions and alignment of legislation, policy and practice”
Integrated Urban Development Framework	Increase the devolution of powers and resources to metro government. The focus needs to shift from policy development and procedural (compliance-driven) initiatives to improving implementation of the current mandates and taking on new functions, while strengthening intergovernmental relations between the three spheres of government
SALGA Devolution Framework 2016	Supports devolution to local authorities

### 3.1 Policy Imperatives

Section 156(1) and Schedule 4B of the Constitution make municipal public transport a municipal function. For more than two decades, various transport policy, legislative and development frameworks like the 1996 White Paper, the Public Transport Strategy and Action Plan, 2009 National Land Transport Act (“NLTA”), National Master Plan 2050 (NATMAP) and the more recent Integrated Urban Development Framework

(IUDF) have supported decentralization of land transport functions. The support has been framed to ensure most effective performance of functions, delivery of integrated and efficient transport services and to better work toward and achieve intermodal and interoperable public transport and much desired integration with spatial and land use planning and management. Furthermore to improve access to opportunities and better address the local jurisdiction and functional region mobility complexities.

It is interpreted that amendments proposed pertaining to “contracting” is leveraging a shift away from the principle of decentralization and devolution of functions, conceptualized and penned more than twenty years ago and in more recent urban development policy and could compromise the intention to achieve the provision of integrated, multimodal and efficient services.

#### **4. PRELIMINARY COMMENTS**

Comments are tabulated below. Key inputs and comments have been received by SALGA, with the appeal from local authorities for organised local government, to formally make submissions on the National Land Transport Bill [B 7 – 2016], commenting process.

Besides submissions received, municipalities raised specific concerns regarding the contracting amendments in the Bill through the “Peer Learning Session on Bus Rapid Transit”, hosted by SALGA on 6 June 2018 and inputs received during Integrated Public Transport Network Assessment program in April 2018.

**Comments on the proposed amendments in the National Land Transport Bill  
[B 7 – 2016]**

Respective Section	Comment
<p>Amendment of Section 1:</p> <ul style="list-style-type: none"> <li>• “integrated public transport network”</li> <li>• “municipal regulatory entity”</li> <li>• “non-motorised transport” inserted to provide more clarity</li> <li>• “contracting authority”</li> </ul>	<ul style="list-style-type: none"> <li>• In the context where rail exist as a mode, rail should be included in the definition</li> <li>• Noted – with the emphasis that this is one of the key functions within the basket of required assignments to local authorities</li> <li>• Principle is noted and supported – a fundamental requirement in the travel chain</li> <li>• The concern in the municipal governance space is that it is understood that through the proposed amendment provincial governments would have the responsibility for concluding negotiated contracts, subsidised service contracts commercial service contracts, and stopgap contracts. As articulated this amendment is <u>not fitting with Section 156(1) and Schedule 4B of the Constitution of the Republic of South Africa (1996), The National Transport White Paper (1996), the Public Transport Strategy and Action Plan, the National Development Plan 2030, and the Integrated Urban Development</u></li> </ul>

	<p><u>Framework which stipulate municipal public transport best suited at the municipal sphere.</u></p> <p>The contracting authority is one of the key functions within the basket of required assignments to local authorities</p>
<p>Amendment of Section 2</p> <ul style="list-style-type: none"> <li>• promote measures to ensure safety of pedestrians</li> </ul>	<ul style="list-style-type: none"> <li>• Principle is noted and supported – an important mode of transport and the daily travel chain</li> </ul>
<p>Amendment of Section 8</p> <ul style="list-style-type: none"> <li>• requirements and timeframes for vehicles and facilities to accommodate the needs of targeted categories of passengers including the provision of minimum standards required in any aspect of the public transport network</li> </ul>	<ul style="list-style-type: none"> <li>• The principle is accepted and should be applied in the Integrated Public Transport Network (IPTN) – this includes rail transport. The strategy must take into account the evolution of the IPTN to date and the funding requirement and dependency to retrofit what exists in the network as well as fit within the rollout of the new network extensions</li> </ul>
<p>Amendment of Section 11</p> <ul style="list-style-type: none"> <li>• municipalities may enter into new contracts for public transport services only where they <u>meet criteria that will be prescribed by</u></li> </ul>	<ul style="list-style-type: none"> <li>• Municipalities have raised concerns pertaining to the approach on “(prescribed)” criteria and development of an evaluation framework by the Minister. Aspects pertaining</li> </ul>



<p><u>the Minister</u> in consultation with the Minister responsible for local government matters. They must also follow procedures that will be prescribed in regulations. Provisions have also been inserted to empower provinces to intervene, and if necessary enter into the contracts themselves, where municipalities do not comply with the prescribed requirements or criteria.</p> <ul style="list-style-type: none"> <li>• The Minister may assign the function contemplated in subsection (1)(a)(viii) to a municipality, subject to section 156(4) of the Constitution and sections 9 and 10 of the Systems Act, to achieve the objectives of the Constitution and this Act</li> </ul>	<p>to transparency, lead and lag times, conclusion and approval of such a framework, and potential and real impact on service delivery to the users are key to this context. Consideration must be given to transition arrangements while the evaluation framework is in process by the Minister not to impact on service delivery, user needs and governance aspects</p> <ul style="list-style-type: none"> <li>• Noted and supported – with the emphasis that this (operating licensing function) is only one of the key functions within the basket of required assignments to local authorities</li> </ul>
<p>Amendment of Section 12 (Act 5 of 2000) IGR</p> <ul style="list-style-type: none"> <li>• A province may pass legislation or enter into an agreement with one or more municipalities in the</li> </ul>	<ul style="list-style-type: none"> <li>• Noted and supported – noting the potential capacity constraints in the functional region</li> </ul>

<p>province to provide for the joint exercise or performance of their respective powers and functions...</p>	<p>context – but must not compromise the principle of devolution to the municipal sphere</p>
<p>Amendment of Section 36</p> <ul style="list-style-type: none"> <li>• seeing that the planning authority and all other organs of state involved in or affected by provincial planning followed the correct procedures and otherwise complied with the prescribed requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Could compromise the approval of Integrated Transport Plans and timing thereof by MEC's, noting the dependency on entities "outside" of the planning authority</li> </ul>
<p>Amendment of Section 41 (Negotiated contracts)</p> <ul style="list-style-type: none"> <li>• 41(6) Section 42(6) applies with the necessary changes to negotiated contracts contemplated in this section</li> </ul>	<ul style="list-style-type: none"> <li>• Note and support the scope for guidelines but must not compromise the municipality's negotiating position or ability to negotiate the most appropriate contract for the context</li> </ul>
<p>Amendment of Section 42</p> <ul style="list-style-type: none"> <li>• 42(6)The Minister may, in consultation with the MECs <ul style="list-style-type: none"> <li>(a) Prescribe requirements for tender and contract documents to be used for</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Note and support the scope for guidelines but must not compromise the municipality's negotiating position or ability to negotiate the most appropriate contract for the context</li> </ul>

<p>subsidised service contracts which may be made binding on contracting authorities unless the Minister agrees in writing that an authority may deviate from the requirements in a specific case on written application by that authority and (b)</p>	
<ul style="list-style-type: none"> <li>• Substitution of section 47 of Act 5 of 2009 (Conversion of permits to operating licences and of indefinite period operating licences to definite period licences, and rationalisation of operating licences)</li> </ul>	<ul style="list-style-type: none"> <li>• It is proposed that a structured, planned and systemic approach and process is required with possible mechanisms to terminate or convert to a more structured licensing option to assist municipalities</li> </ul>

## 5. CONCLUSION

As indicated above, some amendments are noted and supported. However, with amendments pertaining to “contracting” generally, it is understood that such proposed amendments is leveraging a shift away from the principle of decentralization or devolution of functions, as articulated in the various transport and development policy documents. This has been on the local government radar for more than two decades and the amendment could compromise the intention to

achieve the provision of integrated, multimodal and efficient public transport services. Recognizing that this requires process, the option for municipalities to prove that they have the capacity for planning, implementation, management and operations, must be made available to such municipalities to remain responsible for concluding public transport contracts.

Please note these are the preliminary comments and SALGA as organized local government, is requesting an opportunity to formally do a presentation to the Select Committee on Economic and Business Development, when the committee would be considering written submissions, during the in the month of September 2018.

Please accept that these comments are made in the spirit of cooperative governance.

Kind regards

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**XOLILE GEORGE**  
**CHIEF EXECUTIVE OFFICER**