

REPORT OF THE PORTFOLIO COMMITTEE ON PUBLIC WORKS ROADS AND TRANSPORT, COMMUNITY SAFETY, SECURITY AND LIAISON ON ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT BILL [B38B-2015]

1. INTRODUCTION

The Speaker referred the Administrative Adjudication of Road Traffic Offences Amendment Bill, [B38B-2015] (the Bill) to the Portfolio Committee on Public Works, Roads and Transport, Community Safety, Security and Liaison (the Committee) for consideration and report back to the House, in accordance with the legal prescripts and the Rules and Orders of the Mpumalanga Provincial Legislature.

In terms of section 118(1) of the Constitution, the Legislature has a mandate to facilitate public involvement in the law making, oversight and other processes of the Legislature. It is against this background that the Committee conducted public hearings to solicit inputs and views from members of the public and organized stakeholders on the above-mentioned Bill.

2. OBJECTIVES OF THE BILL

The purpose of the Bill is to;

- To amend the Administrative Adjudication of Road Traffic Offences Act, 1998, so as to substitute and insert certain definitions.
- To improve the manner of serving documents to infringers.
- To add to the functions of the Road Traffic Infringement Authority.
- To repeal certain obsolete provisions; to establish and administer rehabilitation programmes.
- To provide for the apportionment of penalties.

- To provide for the establishment for the Appeals Tribunal and matters related thereto; to effect textual corrections; and to provide for matters connected therewith.

3. METHOD OF WORK

- a) The Committee was briefed on the Bill by the National Council of Provinces (NCOP) permanent delegate, Hon SG Mthimunye, on 28 November 2017.
- b) The Committee conducted public hearings in order to solicit inputs/comments from members of the public. Interested people and stakeholders were also invited to submit written comments on the Bill in order to assist the Committee during deliberations that will give effect to the negotiating mandate.
- c) Invitations to public hearings and the submission of written comments on the Bill were placed in the Khanyisa Weekly News; Mpumalanga Press and the Lowvelder which are the major newspapers circulating in the province.
- d) The Public hearings were conducted on Friday, 09 February 2018, from 09h00 – 13h00 in the following Districts:

DISTRICT	VENUE	No. of Attendees
Ehlanzeni	Kanyamazane Community Hall - Mbombela Local Municipality	178
Nkangala	Eric Jiyane Community Hall - Steve Tshwete Local Municipality	158
Gert Sibande	Wesselton Community Hall – Msukaligwa Local Municipality	153

- e) The Committee thereafter met on 18 April 2018 to consider the draft report and the Negotiating Mandate on the Bill and such mandate was duly submitted to the NCOP as [B38B-2015].

4. INTERACTION BY THE COMMITTEE WITH THE PERMANENT DELEGATE AND THE NATIONAL DEPARTMENT OF TRANSPORT

4.1. Presentation by the NCOP Permanent Delegate

Honourable SG Mthimunye, indicated to the Committee that as the Member of the National Council of Provinces, representing the Mpumalanga Province, he is mandated to present the Bill to the Committee. He indicated that the Bill that is under discussion has adhered to legal prescripts and is in order. He further assured the Committee that he take all the inputs from the Honorable Members to the NCOP. Honorable Mthimunye requested that the department, as the custodian of the Bill, present the amendment bill to the Committee.

4.2. Presentation by the Department of Transport

The delegation from National Department of Transport, namely, Mr J Motsitsing, Director: briefed the committee on the proposed Bill.

In the presentation made to the Committee the following were highlighted:

The Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998), commonly referred to as AARTO, which is the Act, seeks to promote road traffic quality by providing for a scheme that discourages road traffic contraventions and facilitate the efficient adjudication of road traffic infringements. The Act has been in operation on a pilot phase in the jurisdictional areas of Tshwane and Johannesburg Metropolitan Municipalities where some challenges and inefficiencies have been identified and that the said challenges need to be addressed before the national roll-out. The Act was piloted in restricted jurisdictions in order to:

- test the applicable systems, processes & procedures
- assess the impact on operations
- determine the relevance of the legislative framework & identify deficiencies
- identify weakness & implement applicable interventions prior to rollout

- Lessons have been learned during the implementation in Tshwane & Johannesburg
- The attendant weaknesses that affected operations and systems interfaces have been corrected
- The Amendment Bill provisions are informed by empirical evidence stemming from implementation
- The amendments to the Act are also based on world-best practice and benchmarked with leading international countries, such as Australia, Canada, USA and Sweden

The Administrative Adjudication of Road Traffic Offences Amendment Bill (the Bill) seeks to amend the Act in order to achieve efficiency and financial sustainability of issuing authorities as well as the Road Traffic Infringement Agency, which the Bill amends to the Road Traffic Infringement Authority (Authority). The amendments identified in the Bill will assist the agency as well as the issuing authorities to be financially stable in order to proceed with proper implementation of AARTO.

The object of the Bill are:

- To improve the manner of serving documents to infringers;
- To add to the functions of the Road Traffic Infringements Authority;
- Repeal certain obsolete provisions;
- Establish and administer rehabilitation programmes;
- Provide for the Apportionment of penalties;
- To provide for the establishment of Appeals Tribunal

Twenty-two (22) Clauses were presented in terms of the Bill, as well as the presentation (attached as Annexures A and B).

The Bill was presented to the National Economic Development and Labour Council Task Team, and after numerous meetings it was approved. The Bill was also

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published for public comment in the Government Gazette No 36613 of 28 June 2013. Furthermore, a wide range of stakeholders were consulted in preparation for the draft Bill, including -

- The Road Traffic Management Corporation;
- the Road Traffic Infringement Agency;
- the Johannesburg Metropolitan Police Department;
- the Tshwane Metropolitan Police Department;
- the Ekurhuleni Metropolitan Police Department;
- the Provincial Departments of Transport;
- the Justice Project South Africa;
- the South African Vehicle Rental and Leasing Association; and
- the South African Local Government Association.

The comments where necessary were incorporated in the final draft Bill and was scrutinized and certified by the State Law Advisors. A wide range of stakeholders made submissions during public hearings by the Portfolio committee on the Bill, including -

- Ekurhuleni Metro Police Department(EMPD);
- City of Johannesburg;
- Justice Project South Africa(JPSA);
- Auto Mobile Association of South Africa(AA);
- CANCOM Pty Ltd;
- South African Local Government Association (SALGA).
- South African Vehicle Rental & Leasing Association (Savralla)
- Individual Persons.

The Bill was endorsed by the National Portfolio Committee on Transport and the National Assembly passed it on 5 September 2017.

4.3. Inputs by the Department of Community Safety, Security and Liaison

The department indicated that they have been in consultation with the National Department on the processing of the Bill as well as that the department agrees with all the amendments that have been presented.

4.4. Inputs by the Committee

The Committee raised the following matters:

- That the confirmation of the amendment bill by the National department of transport as they have shared the changes and the amendments, and the robust interaction that is said to have taken place as well the amendment of the Act is welcomed.
- Clause 5 amending section 13 of the Act, which provides for the financing of the Authority, where a new paragraph inserted in section 13 of the Act, to provide that the finances of the Authority are also derived from penalties issued and collected by or on behalf of an issuing authority. The Act defines an “issuing authority” as a local authority, a provincial administration or the Road Traffic Management Corporation established under section 4 of the Road Traffic Management Corporation Act, 1999 (Act No. 20 of 1999), and the Bill adds “any other state institution declared by the Minister by regulation to be an issuing authority”, to the list; was appreciated and welcomed in that the revenue that will be paid back to the provincial road.
- With regard to Clause 17, which amends section 31 of the Act and provides for penalties. Clause 17 in effect provides that laws of prescription are not applicable to traffic penalties and fines. In terms of clause 8 of the Bill, if a representation is successful as a result of prescribed procedures not being complied with, the infringement notice, courtesy letter or enforcement order may be reserved. A concern of the Committee is whether the amendment will

call for any amendment within the law perspective. **Prescript of the law should be classified**

- The time frame for the adoption of the amendments needs to be considered as the prescribed six (6) will not be sufficient for this type an amendment Bill, given its nature and technicality.
- The Concern is also with regards to the countries that were used to benchmark the applicability of the bill and the department was advised to consider South Africa is a democratic country with individual rights.
- The practicality of Clause 7 of the Bill, which amends section 17 of the Act which provides for issuance of infringement notices and ascertainment of demerit points position, amongst other things. A particular emphasis was with regard to the clause amends section 17(5) to penalize a person for permitting another to take charge of a vehicle without ascertaining the required particulars of that person. The Committee was of a concern that this may open gaps regarding the driver's particular information.
- On the lessons that have been learned during the implementation of the act (as a pilot) in Tshwane and Johannesburg Metros, the Committee regards the two municipalities as not qualifying for the lessons learned.
- The Committee felt that the presentation was all about the law enforcement, and that the Clauses (the Bill itself) do not consider the impact it will have on the governing party and that the movements are going to revolt across the county. Moreover, the timing for the introduction of the bill as the mobilization will take place was not considered by the department.

4.5. Presentation by the Legislature Legal Section.

Legal Services provided the Committee with assurance that the Bill was correctly classified as a Section 76 Bill and that the Bill has complied with rule 159 of the Joint Rules of Parliament. The Bill was published for public comments and also relevant stakeholders were consulted especially organised local government in line with

section 163 of the Constitution. The Bill has been certified by the State Law Advisors and therefore it has been found constitutionally compliant.

Legal Services went further to advise that the Bill must be dealt with in accordance rule 201 of the Mpumalanga Provincial Legislature's Rules & Orders.

5. PUBLIC HEARING

The committee resolved at its meeting held on 28 November 2017 that, in order to adhere to Section 118(1) of the Constitution that mandates the Legislature to facilitate public involvement in the legislative and other processes of the Legislature and its Committees; to conduct a public hearings on Friday, 09 February 2018.

5.1. Public Involvement

Invitations to the public hearing were extended to a broad segment of stakeholders. Invitations were extended to, among others, business sector, political parties, SALGA, transport Sector, Mpumalanga House of Traditional Leaders and provincial departments.

The committee made a call for attendance at the public hearing and to submit written submissions, using the following newspapers; namely the Khanyisa Weekly News; Mpumalanga Press and the Lowvelder. No written comments were received emanating from the advertisements in newspapers.

The Public Participation and Petitions Unit of the Legislature mobilized communities in all three districts of the province to attend the public hearing. The following areas were mobilized to attend the public hearing:

- Kanyamazane Community Hall - Mbombela Local Municipality [Ehlanzeni District]

- Eric Jiyane Community Hall - Steve Tshwete Local Municipality [Nkangala District]
- Wesselton Community Hall – Msukaligwa Local Municipality [Gert Sibande District]

The Honourable Members conducting the public hearings explained that the Legislature seeks input and opinion on the legislation at hand from specific stakeholders and communities in the province. It was emphasised that the inputs by stakeholders and communities are very important to the Legislature and that it will be conveyed to the NCOP and National Government through the relevant channels.

The public was provided with a thorough overview on the Bill; and the delegations from National Department of Transport assisted the committee at each public hearing.

5.1.1. Eric Jiyane Community Hall - Steve Tshwete Local Municipality

The community raised the following in relation to the Bill:

- a) On the issue of the demerit point system, the community raised a concern that the owners of vehicle will suffer as some they do not have way of living they depend on transport business.
- b) Community members raised a serious concern on suspension of licenses also, what will happen to those who depends on driving for supporting their families since there is no jobs in our country.
- c) Community members requested more engagement on the bill i.e. taxi associations, youth engagement

5.1.2. Wesselton Community Hall - Msukaligwa Local Municipality

- a) The community raised the concern that the bill was incorrectly piloted in Gauteng where the roads are often in a good condition.
- b) The local municipalities must be well capacitated to be able to render services to road users.
- c) The bill does not address the issue of corruption by Traffic officers.

5.1.3. Kanyamazane Community Hall - Mbombela Local Municipality

- a) The community stated that provision should be made for citizens who cannot read nor understand English; the bill should be translated into Zulu prior the involvement of the public for their input.
- b) The Community indicated that they are not in agreement with the point system and it will disadvantage license holders and road users. They further stated that it is not fair that you cannot renew your license or disc if you have incurred offenses.

6. OBSERVATIONS AND FINDINGS BY THE COMMITTEE

- 6.1. It became clear to the committee that members of the public are not familiar with the Administrative Adjudication of Road Traffic Offences Act, hence they were raising issues on the sections of the Bill which are not subject to amendments.
- 6.2. The public strongly stressed the fact that they welcome all the regulatory legislation that the government is enacting however the proposed Bill may have a negative impact on the government's priority of poverty alleviation and job creation in that the demit system may result in a number of people being unemployed, especially those who are in the transport industry.

- 6.3. Generally, the members of the public focused a lot on the sections of the Act (Administrative Adjudication of Traffic Offences Act) which are not subjected to amendment like the demerit point system which led to them not supporting the Bill.
- 6.4. From the three districts where public hearings were held, two districts, namely, Gert Sibande and Nkangala Districts voted against the Bill, whilst Ehlanzeni District voted in favour of the Bill.

7. RECOMMENDATIONS

The delegation representing the Province of Mpumalanga in the NCOP should focus on the following:

- 7.1. The department must roll out awareness programmes to the general public throughout the country and give people assurance that the AARTO Act is one of the measures that the government has put in place to decrease traffic rules transgression which will lead to a reduction of road accidents.

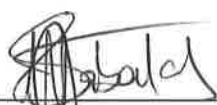
The delegation representing the Province of Mpumalanga in the National Council of Provinces (NCOP) is conferred with authority and mandated to abstain from voting on the Administrative Adjudication of Road Traffic Offences Amendment Bill [B38B-2015] with the proposed amendments, taking into account the input and observations noted in this report.

8. CONCLUSION

The Chairperson wishes to thank all members of the public and stakeholders for their worthwhile participation in the public hearings and for the inputs or comments they have made.

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The Chairperson further extend a word of gratitude to the Members of the Committee, the NCOP Permanent Delegate, and Hon SG Mthimunye for the efforts in ensuring that the Committee meets its obligation and the support staff who contributed to the success of the whole process.



HON GC SHABALALA

**CHAIRPERSON: PORTFOLIO COMMITTEE
ON PUBLIC WORKS, ROADS AND TRANSPORT,
COMMUNITY SAFETY, SECURITY AND LIAISON**

25/10/18

DATE