



FREE STATE PROVINCE

PROVINCIAL GAZETTE

PROVINSIALE KOERANT

PROVINSIE VRYSTAAT

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| OFFICE OF THE PREMIER _____ | KANTOOR VAN DIE PREMIER _____ | OFISI YA TONAKGOLO _____ |
|---|--|--|
| No. 4 16 September 2005 | No. 4 16 September 2005 | Nomoro ya 4 16 Loetse 2005 |
| It is hereby notified that the Acting Premier has assented to the following Act which is hereby published for general information:- | Hierby word bekend gemaak dat die Waarnemende Premier die onderstaande Wet bekragtig het, wat hierby ter algemene inligting gepubliseer word:- | Mona ho tsebiswa hore Tonakgolo e tshwereng mokoboloo e ananetse Molao o latelang o tla phatlalatswa bakeng la tlhahisoleseding ya kakaretso:- |
| No. 4 of 2005 : Free State Public Transport Act, 2005 | No. 4 van 2005 : Vrystaatse Wet op Openbare Vervoer, 2005 | Wa Nomoro ya 4 wa 2005 : Molao wa Dipalangwang tsa Setjhaba Freistata, 2005 |

ACT

To provide for a public transport system as part of an integrated system of land transport for the Free State, compatible with the National Land Transport System and the Land Transport Systems of the other provinces; to repeal the Free State Interim Passenger Transport Act; to bring provincial public transport legislation in line with Chapter 2 of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000) and to replace Chapter 3 of that Act as regards public transport matters that are dealt with in this Act; and to provide for connected matters.

BE IT ENACTED by the Free State Provincial Legislature, as follows:-

(English text assented to and signed by the Acting Premier.)

ARRANGEMENT OF SECTIONS

5

PART I

INTRODUCTORY PROVISIONS

10

1. Definitions
2. Purpose of the Act
3. Interpretation of this Act

PART 2

15

PUBLIC TRANSPORT SERVICES

4. Principles for specifying public transport services in transport plans
5. Exemptions
6. Provisions relating to drivers and vehicles
7. Categories of services
8. Metered taxi service
9. Minibus taxi type service
10. Bus-type service
11. Education service
12. Tourists service
13. Charter service
14. Staff service
15. Courtesy service
16. Coach type service
17. Shuttle service

20

25

30

- 18. Limousine type service
- 19. Chauffeur driven service
- 20. Adapted light delivery vehicle
- 21. Four plus one taxi type service

5

PART 3

FUNCTIONS AND POWERS OF THE MEC

- 22. Functions and powers of the MEC
- 23. Regulations by MEC
- 24. Integrated land transport information system

10

PART 4

PUBLIC TRANSPORT PLANNING

15

- 25. Principles for public transport planning
- 26. Public transport plans
- 27. Duties of planning authorities relating to planning
- 28. Transitional matters relating to planning

20

PART 5

TRANSPORT AUTHORITIES

25

- 29. Agreements for formation of transport areas and transport authorities
- 30. Declaration of transport areas and concomitant establishment of transport authorities
- 31. Contents of founding agreements
- 32. Functions and competencies of transport authorities
- 33. Ancillary powers of transport authorities
- 34. Governance of transport authorities
- 35. Dissolution of transport authorities
- 36. Finance of transport authorities
- 37. Delegations by the governing body
- 38. Provisions applicable to delegations
- 39. Transport executives
- 40. Joint transport executives

30

35

40

PART 6

JOINT ROUTE MANAGEMENT COMMITTEES

- 41. Establishment of Joint Route Management Committee

45

PART 7**PROVINCIAL OPERATING LICENSE BOARD**

| | | |
|-----|--|----|
| 42. | Establishment and Constitution of the Free State Transport Operating License Board | 5 |
| 43. | Resignation, vacation of and removal from office of Board members | |
| 44. | Powers of the Board | |
| 45. | Meetings and decisions of the Board | |
| 46. | Establishment of Advisory Panel to the Board | 10 |
| 47. | Establishment of transport operating license administrative bodies | |

PART 8**OPERATING LICENSES 15**

| | | |
|-----|---|----|
| 48. | Conversion of permits to operating licenses | |
| 49. | Contracts of services | |
| 50. | Lapsing and cancellation of operating licenses and permits in relation to contracts | |
| 51. | Application concerning operating licenses | 20 |
| 52. | Disposing of an application for an operating license | |
| 53. | Interprovincial transport | |
| 54. | Cross-border road transport | |
| 55. | Publication of an application in respect of an operating license | |
| 56. | Period and renewal of an operating license | 25 |
| 57. | Issue of an operating license and provisions thereof | |
| 58. | Records of operating licenses | |
| 59. | Temporary replacement of a vehicle to which an operating license or permit relates | |
| 60. | Duties of the holder of the permit or operating license | 30 |
| 61. | Limitations on authority conveyed by an operating license | |
| 62. | Withdrawal, suspension or variation of an operating license | |
| 63. | Cancellation of operating licenses not brought into use | |
| 64. | Withdrawal of surplus operating licenses or permits | |
| 65. | <i>Ad hoc</i> authorisations | 35 |
| 66. | Special circumstances operating licenses | |
| 67. | Increase of certain tariff prior to applications for amendment of relevant permits or operating license | |

PART 9 40**THE FREE STATE TRANSPORT REGISTRAR AND REGISTRATION OF ASSOCIATIONS AND OPERATORS**

| | | |
|-----|---|----|
| 68. | Appointment of the Free State Transport Registrar and Panel of Assessors | 45 |
| 69. | Resignation, vacation of and removal from office of Registrar and assessors | |
| 70. | Duties of the Registrar | |

- 71. Powers of the Registrar
- 72. Meetings and decisions of the Registrar and Assessors
- 73. Application for registration
- 74. Issuing of certificates and distinguish marks upon registration
- 75. Associations, members and non-members undertaking interprovincial transport 5
- 76. Reservation of privileges for registered associations and operators

PART 10

REGISTRATION OF MINIBUS TAXI ASSOCIATIONS AND OPERATORS 10

- 77. Compulsory registration of association, members and non-members in respect of minibus taxi-type services
- 78. Associations and operators registered under the Free State Interim Passenger Transport Act 15
- 79. Elections and referenda
- 80. Registration of associations
- 81. Registration of members of registered associations
- 82. New members of registered associations
- 83. Registration of non-members 20
- 84. Disciplinary measures

PART 11

REGISTRATION OF METERED TAXI ASSOCIATIONS AND OPERATORS 25

- 85. Registration of metered taxi associations, members and non-members
- 86. Registration of metered taxi associations
- 87. Registration of non-members operating metered taxi services 30

PART 12

REGISTRATION OF BUS-TYPE AND COACH-TYPE ASSOCIATIONS AND OPERATORS 35

- 88. Registration of associations, members and non-members operating bus-type and coach-type services
- 89. Registration of associations of operators of bus-type and coach-type services
- 90. Registration of non-members operating bus-type and coach-type services 40

PART 13

REGISTRATION OF FOUR PLUS ONE TAXI ASSOCIATIONS AND OPERATORS 45

- 91. Registration of associations, members and non-members operating four plus one taxi type services
- 92. Registration of associations of operators of four plus one taxi type services
- 93. Registration of non-members operating four plus one taxi type services

PART 14

REGISTRATION OF ASSOCIATIONS AND OPERATORS PROVIDING TRANSPORT FOR EDUCATION SERVICES

- | | | |
|-----|--|---|
| | | 5 |
| 94. | Registration of associations, members and non-members providing transport for education services | |
| 95. | Registration of associations of operators providing transport for education services | |
| 96. | Registration of non-members providing transport for education services | |

10

PART 15

LAW ENFORCEMENT

- | | | |
|------|--|----|
| 97. | Public transport law enforcement | 15 |
| 98. | Appointment of inspectors | |
| 99. | Impoundment of vehicles | |
| 100. | Presumption and proof of certain facts | |
| 101. | Special emergency measures | |
| 102. | Offences | 20 |
| 103. | Penalties | |
| 104. | Demerit System | |
| 105. | Powers of authorised officer | |

PART 16

25

PROVINCIAL APPEAL TRIBUNAL

- | | | |
|------|---|----|
| 106. | Establishment of Provincial Appeal Tribunal | |
| 107. | Meeting of Tribunal | 30 |
| 108. | Appeal to Tribunal | |
| 109. | Staff of Tribunal | |

PART 17

35

GENERAL PROVISIONS

- | | | |
|------|--------------------------------------|----|
| 110. | Compulsory insurance for operators | |
| 111. | Measures to support public transport | |
| 112. | Transitional provisions | 40 |
| 113. | Repeal of legislation | |
| 114. | Short title and commencement date | |

PART 1

INTRODUCTORY PROVISIONS

| | |
|--|----|
| Definitions | 5 |
| 1. In this Act, unless the context otherwise indicates – | |
| “ accounting officer ” means the head of the Department responsible for transport in the Province; | 10 |
| “ ad hoc authorisation ” means an authorisation granted under section 65 of this Act; | |
| “ adapted light delivery vehicle ” means a light delivery vehicle and any of its conversion components that have been manufactured or adapted for the conveyance of persons by registered manufacturer in compliance with the National Road Traffic Act, 1996 (Act No. 93 of 1996); | 15 |
| “ Advisory Panel ” means the Free State Operating Licensing Board Advisory Panel established under section 46 of this Act; | 20 |
| “ association ” means any group of persons formed primarily in relation to the operation of any mode of public transport service, and – | 25 |
| (a) which has been formed not for gain; | |
| (b) whose object is to promote the interests of its members; and | |
| (c) whose funds are to be applied in promoting those interests; | 30 |
| “ authorised official ” means – | |
| (a) an inspector contemplated in the National Act; | 35 |
| (b) a member of the South African Police Service, including a member of a municipal police service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995); | |
| (c) a person in the service of the Department or a municipality, whose duty is to inspect motor vehicles, motor vehicle licenses or control traffic; | 40 |
| (d) a road transport inspector contemplated in section 39 of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998); | 45 |
| “ based ” means that the majority of members of an association or inter-provincial association or non-member concerned as the case may be, conduct their or his or her operations respectively, within the Province; | |

“**Board**” means the Free State Transport Operating Licensing Board established for the province in compliance with section 42 of this Act to exercise the powers mentioned in section 44 of this Act;

“**bus**” means a motor vehicle designed or lawfully adapted by a registered manufacturer in compliance with the Road Traffic Act, 1989 (Act 29 of 1989), to carry more than 35 persons excluding the driver, subject to any limitation imposed by the National Act; 5

“**bus train**” means a motor vehicle which – 10

- (a) consists of two sections connected to form a unit;
- (b) can swivel in a horizontal plane at the connection between such sections;
- (c) is designed or adapted solely or principally for the conveyance of the driver and at least 100 other persons; and 15
- (d) has a continuous passageway over its length; 20

“**capacity building**” means investment made with the purpose of enhancing the ability of individuals and institutions to achieve their development goals;

“**charter service**” means a public transport service operated by road involving the hire of a vehicle and a driver for a journey at a charge arranged beforehand with the operator, where – 25

- (a) neither the operator nor the driver charges the passengers individual fares;
- (b) the person hiring the service has the right to decide the route, date and time of travel; and 30
- (c) the passengers are conveyed to a common destination;

“**coach-type services**” means a scheduled public transport service, using a coach operating on pre-determined routes and tariffs contemplated in section 16 of this Act; 35

“**commercial service contract**” means an agreement concluded between a contracting authority and a public transport operator in terms of which the – 40

- (a) operator is to operate a public transport service, provided for in a public transport plan;
- (b) operator’s consideration consists of fares payable by the passengers that are carried and, where passengers pay concessionary fares, also of the reimbursement made by the contractory authority to that operator; and 45

- (c) operator does not receive any subsidy or other financial support from any organ in any sphere of government and for the purposes of this paragraph, reimbursements made to the operator in respect of **concessionary** fares is not regarded as a subsidy or other form of financial support; 5
- “concession agreement”** or “concession” means any agreement between a public transport operator and a contracting authority for the operation of a public transport service on a railway line or rail network –
- (a) in accordance with a public transport plan; and 10
- (b) at a price and on a service level provided for in that agreement, whether or not the public transport operator, in terms of the agreement, is also required to construct, maintain or rehabilitate the infrastructure and other assets used in connection with that service; 15
- “concessionary fare”** means the fare paid by a passenger falling within a special category;
- “Constitution”** means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); 20
- “contract”** means a subsidised service contract, unsubsidised service contract, current tendered contract or interim contract; 25
- “contracting authority”** means the Department, transport authority, municipality or any core city, bound to a contract or concession agreement concluded with a public transport operator;
- “co-operative”** means a co-operative as defined in the Co-operatives Act, 1981 (Act No. 91 of 1981); 30
- “core city”** means a municipality designated under section 4 of the Urban Transport Act, 1977 (Act No. 78 of 1977), as the core city of an MTA, and includes any municipality which, after the commencement of the National Act, is so designated; 35
- “courtesy service”** means a complimentary transport service as contemplated in section 15; 40
- “cross-border road transport”** means cross-border road transport as defined in section 1 of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998);
- “current public transport record”** means a transport plan contemplated in section 23 of the National Act; 45

- “current tendered contract”** means a contract concluded before the commencement date of the National Act for the operation of a public transport service between the Department, on the one hand, and, a public transport operator, on the other hand, to whom the tender for the provision of a service was awarded by the accounting officer in accordance with the tender system applicable to the Department, and which is still binding between them, the term of which expires only after the date of commencement of the National Act, and includes a contract which is binding between the – 5
- (a) public transport operator and the Department due to the National Department of Transport assigning its rights and obligations to the Department irrespective of whether the assignment occurred before or after the date of commencement of the National Act; or 10
- (b) public transport operator and a transport authority or a municipality or a core city to which the province, after the date of commencement of the National Act – 15
- (i) may have assigned its rights and obligations, or 20
- (ii) as the case may be, may have further assigned the rights and obligations assigned to it by the National Department of Transport in terms of paragraph (a);
- “Department”** means the Department responsible for Transport in the Province; 25
- “education service”** means a service as contemplated in section 11 of this Act;
- “four plus one taxi-type service”** means an unscheduled public transport service as contemplated in section 21; 30
- “framework”** means an outline of the structure within and the form according to which a plan, policy or strategy is determined and developed;
- “grievance procedure”** means the procedure laid down in the constitution of an association to resolve an internal grievance raised by a member or a group of members; 35
- “Income Tax Act”** means the Income Tax Act, 1962 (Act No. 58 of 1962); 40
- “infrastructure”** in relation to land transport, means fixed capital equipment and facilities in the land transport system;
- “inspector”** means an inspector designated under section 98 of this Act; 45

“integrated development plan” means the integrated development plan which, in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), is to be prepared by a municipality;

“integrated transport plan” means an integrated transport plan contemplated in section 27 of the National Act; 5

“interim contract” means a contract, not being a current tendered contract, for the operation of a subsidised scheduled service, the term of which expires after the date of commencement of the National Act, and which – 10

(a) was concluded before that date between the Department and the National Department of Transport on the one hand, and the public transport operator who is to operate that service, on the other hand, and is still binding between them or only binding between the Department and that operator; or 15

(b) is binding between that public transport operator and any transport authority, a core city or a municipality, due to the assignment to it, after the date of commencement of the National Act, of the rights and obligations of the Department under the contract contemplated in paragraph (a); 20

“international transport service” means a public transport operating within the republic and partly within another country or in transit through the republic to another country; 25

“interprovincial association” means a registered primary association whose members load and offload passengers in the Province and in one or more other provinces; 30

“interprovincial transport” means a public transport service operating between two or more provinces;

“intraprovincial transport” means a public transport service operating within the boundaries of the Province; 35

“joint route management committee” means a committee as contemplated in section 41;

“key performance indicator” means a yardstick or standard established to measure levels of performance and achievement; 40

“land transport” means the movement of persons and goods on or across land by means of any conveyance and through the use of any infrastructure and facilities in connection therewith; 45

“limousine-type services” means a luxury motor vehicle contemplated in section 18;

“local taxi council” means a committee of representatives of the minibus taxi industry or metered taxi industry established for a local area;

“long distance service” means a scheduled or unscheduled public transport service other than a service for commuting, that is provided beyond the boundary of the area covered by a transport plan, where passengers are charged fares individually;

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“MEC” means the Member of the Executive Council of the Province who is responsible for Transport in the Province;

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“member” means a member of an association;

“metered-taxi service” means a public transport service operated by means of a motor vehicle which is designed, or lawfully adapted, in compliance with the National Road Traffic Act, to carry fewer than nine seated persons, including the driver, where that vehicle –

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(a) is available for hire by hailing, by telephone or otherwise;

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(b) may stand for hire at a rank, and

(c) is equipped with a sealed meter, in good working order, for the purpose of determining the fare payable;

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“midibus” means a motor vehicle designed, or lawfully adapted by a registered manufacturer in compliance with the National Road Traffic Act, to carry from 19 to 35 seated persons, excluding the driver;

“minibus” means a motor vehicle designed or lawfully adapted by a registered manufacturer in compliance with the National Road Traffic Act, to carry from 9 to 18 seated persons, excluding the driver;

30

“minibus taxi-type service” means an unscheduled public transport service operated on a specific route or routes, or where applicable, within a particular area, by means of a minibus or midibus;

35

“Minister” means the Minister responsible for Transport in the national sphere of government;

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“motor car” means a motor vehicle, other than a motor cycle, motor tricycle or motor quadrucycle as defined in the National Road Traffic Act, designed or lawfully adapted by a registered manufacturer in compliance with that Act to carry not more than eight persons, excluding the driver;

45

“motor vehicle” and **“vehicle”** means a motor vehicle as defined in section 1 of the National Road Traffic Act;

“**MTA**” means a metropolitan transport area declared and existing under section 3 of the Urban Transport Act, 1977 (Act No. 78 of 1977);

“**municipal public transport**” means a service for the carriage of passengers within a defined planning authority or transport authority by road and rail for a consideration regardless of whether such transport facilities or assets are municipally owned; 5

“**municipality**” includes all municipalities referred to in section 155(6) of the Constitution, and in the case of a category C municipality referred to in section 155(1)(c) thereof, also includes the category B municipalities referred to in section 155(1)(b) in its area; 10

“**National Act**” means the National Land Transport Transition Act 2000, (Act No. 22 of 2000); 15

“**National Road Traffic Act**” means the National Road Traffic Act, 1996 (Act No. 93 of 1996);

“**non-contracted service**” means a public transport service other than one operated in terms of a commercial service contract, subsidised service contract, current tendered contract, interim contract or concession agreement; 20

“**non-member**” means any person, whether a natural person or a juristic person, who is not a member of an association; 25

“**operating license**” means a public transport operating license required by section 51 of this Act and issued in terms of section 57 of the Act;

“**organ of state**” means an organ of state as defined in section 239 of the Constitution; 30

“**panel**” means the Panel of Assessors appointed under section 68 of this Act;

“**parastatal transport operator**” means an organisation which operates a public transport service and in which the majority of the shares of the controlling interest is held by the Province, or which is otherwise controlled or is owned by the Province; 35

“**participating municipality**” means any municipality that is party to a founding agreement for the establishment of a transport authority; 40

“**permit**” means a public road carrier permit or similar authority issued under a previous law, and which is in force at the commencement of the National Act in terms of section 79 of the National Act; 45

“**persons with disabilities**” means all persons whose mobility is restricted by temporary or permanent physical or mental disability and includes the very young, the blind or partially sighted, the deaf or hard of hearing;

“planning authority” means any body which, in terms of section 20 of the National Act, has to prepare transport plans for its area;

“prescribe” means prescribe by regulations and prescribed has a corresponding meaning;

5

“previous law” means any law the operation and application of which is superseded by this Act;

“Province” means the province of Free State as described in section 103 of the Constitution;

10

“Provincial Taxi Council” means the committee of representatives of the minibus taxi, metered taxi or four plus one taxi industry in the Province established in terms of their Standard Constitution;

15

“public transport operator” means a natural person or juristic person carrying on the business of operating a public transport service;

“public transport plan” means a public transport plan contemplated in section 26 of the National Act;

20

“public transport service” means a service for the carriage of passengers by road or rail, whether the service is subject to a contract or not, and where the service is provided for a fare or other consideration or reward, including any service that is –

25

- (a) minibus taxi-type service;
- (b) bus-type service;
- (c) metered taxi service;
- (d) rail service;
- (e) tourist service;
- (f) staff service;
- (g) charter service;
- (h) education service;
- (i) courtesy service;
- (j) shuttle service;
- (k) limousine-type service;
- (l) chauffeur driven service;
- (m) adapted light delivery vehicle service;
- (n) four plus one service;

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“rail service” means a public transport service operated on a rail track or electro-magnetic guide way;

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“registered” in relation to any association, the members of any association and any non-members, means their registration in the provincial transport register in accordance with this Act and any other applicable laws;

“Registered Constitution” means an association’s constitution, filed in the Registrar’s records, pursuant to the association’s successful application for provisional or full registration; 5

“registered manufacturer” means a manufacturer, importer or builder of motor vehicles registered under section 5 of the National Road Traffic Act; 10

“Registrar” means the person appointed as the Provincial Transport Registrar for the Province in terms of section 68 of this Act;

“roadworthy certificate” means a certificate certifying the roadworthiness of a motor vehicle in accordance with the requirements of the National Road Traffic Act; 15

“scheduled service” means a public transport service operated on the road by motor car, minibus, midibus or bus on a particular route or routes in accordance with a time table; 20

“services” means public transport services;

“shuttle service” means public transport service provided in a limited area or on fixed routes which may be scheduled on demand or unscheduled as referred to in section 17; 25

“special categories of passengers” means learners, educators and lecturers, persons with disabilities, tourists, aged, pregnant women and those who are limited in their movements by children with or without pushchairs or prams; 30

“special event” means a cultural, religious, sporting or recreational event, or any entertainment, conference, exhibition or show, which is to occur or be held on a specific day or a number of specific consecutive days at a predetermined venue; 35

“staff service” means a public transport service by road provided by means of a vehicle owned by an employer, or a vehicle provided by a public transport operator in terms of a contract with the employer, when used exclusively for the conveyance of the employer’s employees; 40

“standard bus” means a motor vehicle designed or lawfully adapted by a registered manufacturer in compliance with the National Road Traffic Act, with a capacity of 36 to 70 seated passengers and the number of standing passengers authorised by the relevant road worthy certificate; 45

“**subsidised service contract**” means an agreement, other than an interim contract or a current tendered contract, concluded between a contracting authority and a public transport operator to operate a scheduled service provided for in a public transport plan and in terms of which the public transport operator, in addition to the passenger fares paid, receives financial support in terms of a tendered contract; 5

“**this Act**” includes any regulation made and in force in terms of section 23 this Act;

“**timetable**” means a published document informing passengers of routes, intervals between departures or the passing of vehicles, or times when and places where public transport services are available, indicating at least origin and destination points and significant intermediate locations along the route; 10

“**Tourism Act**” means the Tourism Act, 1993 (Act No. 72 of 1993); 15

“**tourist service**” means a public transport service by road for the carriage of tourists to or from tourists attractions, where the tourists are accompanied by a tour guide registered under section 21 of the Tourism Act; 20

“**transfer**” in relation to an operating license, means a transfer from the holder of the operating license to another person; 25

“**transport authority**” means an authority contemplated in section 29(1) for a transport area; 25

“**transport plan**” means any plan provided for in section 19 of the National Act;

“**travel demand management**” means a system of actions to maximize the capacity of the transport system for the movement of people and goods rather than vehicles, among others, through increasing vehicle occupancy, developing priority measures for public transport, encouraging travel during off peak period, shifting demand between modes, restricting the space available for parking, adjusting the price of parking, and other appropriate measures; 30

“**Tribunal**” means the Provincial Appeal Tribunal established under section 106 of this Act; 35

“**unscheduled service**” means a public transport service operated by road on a particular route or route network, or where applicable, within a particular area, without a timetable, where passengers are charged fares individually. 40

Purpose of the Act

2. (1) The purpose of this Act is to promote and provide for an effective public transport system for the Free State. This can be achieved by fulfilling the primary objectives of this Act, which are to – 45

- (a) implement provincial and national government policy relating to public transport services and facilities, monitor the implementation of such provincial policy, conduct investigations into issues arising from the implementation of such policy and make necessary policy adjustments; 5
- (b) promote and facilitate the increased utilisation and development of public transport in the Province;
- (c) use the planning and development of public transport as a tool for restructuring society so as to – 10
 - (i) enable and encourage workers to reside nearer to their places of work, especially where locational disadvantages were created by previous discriminatory policies; 15
 - (ii) encourage residential areas to be located nearer to work areas;
 - (iii) promote easier movement of persons in the Province; 20
 - (iv) promote and encourage the use of non-motorised transport in the Province;
 - (v) promote urban renewal, densification and mixed land uses; 25
 - (vi) discourage urban sprawl and promote development of compact urban structures;
- (d) integrate and co-ordinate public transport modes and transport planning with land use and development planning to improve mobility through an efficient public transport system; 30
- (e) take the necessary steps to promote co-ordination between transport authorities and other planning authorities in the province, or between such authorities and the province, with a view to avoid duplication of effort; 35
- (f) promote co-ordination between modes of public transport and the seamless movement of passengers in the system; 40
- (g) promote public consultation and participation before taking any decision or performing any official act and to prescribe the procedures to be followed in that regard;

- (h) control and regulate public transport services through issuing operating licenses to operators of those services, and excluding persons without valid and specific operating licenses from operating such services; 5
- (i) permit motor vehicles to be used for public transport services only in relation to the types of services offered;
- (j) provide for the registration of operators providing certain types of public transport services and associations of those operators; 10
- (k) promote the safety and interest of passengers using public transport services;
- (l) establish institutional structures to support the objectives of this Act; 15
- (m) promote effective and efficient enforcement of laws relating to public transport including road traffic and road safety laws; 20
- (n) promote professional operating practices by the operators of public transport services;
- (o) promote the co-ordinated provision of adequate and accessible public transport infrastructure, subject to specific legislation dealing with roads, railway lines and other transport infrastructure; 25
- (p) promote a system where users pay for the services they receive, except where subsidies are needed to enable affordable transport and effective land use, to provide for the accessibility and mobility of special categories of passengers or for other sound policy reasons, and to ensure that services are subsidised only in those circumstances; 30
- (q) provide for competitive tendering for subsidised public transport services; 35
- (r) provide for effective and integrated data bases and management information systems for public transport operations; 40
- (s) provide for a demerit system for operators of public transport services; and

- (t) promote small, medium and micro enterprises, and operators previously disadvantaged by unfair discrimination.
- (2) This Act replaces Chapter 3 of the National Act with regard to matters dealt with in this Act. 5

Interpretation of this Act

- 3. Any person applying this Act must interpret its provisions – 10
 - (a) to give effect to its primary objectives;
 - (b) in compliance with the National Act, excluding Chapter 3 of the National Act; and 15
 - (c) having due regard to the vision, goals and objectives of the National Transport Policy.

PART 2

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PUBLIC TRANSPORT SERVICES

Principles for specifying public transport services in transport plans

- 4. (1) Strategies must be promoted by the Department and the planning authorities to achieve integration of modes, transport that is accessible for persons with disabilities, transformation and development of small business enterprises and persons previously disadvantaged by unfair discrimination. 25
- (2) Each planning authority must determine and specify the public transport services that will be provided in its transport plans in terms of – 30
 - (a) subsidised service contracts for scheduled services;
 - (b) unsubsidised service contracts for – 35
 - (i) scheduled services;
 - (ii) unscheduled services; and
 - (iii) area services; 40
 - (c) non-contracted services for –
 - (i) scheduled services;
 - (ii) unscheduled services, and
 - (iii) area services operating without subsidy; 45

- (3) A person undertaking a public transport service must –
- (a) have the necessary permit, operating license or *ad hoc* authorisation; and
 - (b) be registered in terms of this Act in the case of minibus taxi-type, metered taxi, bus-type and coach services, four plus one taxi-type and education services subject to sections 77, 83, 86, 87, 89, 90, 92, 93, 94, 95 and 96 of this Act.

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Exemptions

5. For purposes of this Act, the definition of “public transport” is deemed to exclude the following:

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- (a) the conveyance by means of an ambulance of a patient to or from a place where such a patient is to receive or has received medical treatment;
- (b) the conveyance of persons by a motor car as part of a lift club, where every member has a turn to convey or cause to be conveyed the other members or persons designated by those other members to or from a specified place for a specified purpose and where no direct or indirect payment is made for the conveyance.

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Provisions relating to drivers and vehicles

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6. (1) The MEC may prescribe codes of conduct for drivers of vehicles used for the various types of public transport services.
- (2) The MEC may impose requirements that drivers of vehicles used for public transport services must attend training courses.
- (3) The Board –
- (a) must approve the type and condition of vehicles to be used for particular public transport services; or
 - (b) may require an applicant for an operating license to submit a vehicle for retesting where it suspects that the vehicle is not roadworthy, notwithstanding that a valid roadworthy certificate has been issued in respect of the vehicle; and
 - (c) may refuse to issue an operating license if in its opinion a vehicle is not roadworthy.
- (4) Vehicles used for public transport services must be clean when in operation, both inside and outside, in accordance with applicable prescribed guidelines, or in the case of a contract, the contracting guidelines stipulated.

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- (5) In addition to the requirements of the National Road Traffic Act, vehicles used for public transport services must be kept in a good condition both inside and outside.
- (6) A vehicle used for public transport services must be equipped with at least one fire extinguisher in working condition and a first aid box containing the articles as prescribed. 5
- (7) The fire extinguisher and first aid box must be placed in the prescribed manner and be serviced at prescribed intervals. 10

Categories of services

- 7. (1) Operating licenses for public transport services are issued in respect of the following services: 15
 - (a) A metered taxi service referred to in section 8;
 - (b) A minibus taxi-type service referred to in section 9;
 - (c) A bus-type service referred to in section 10;
 - (d) An education service referred to in section 11; 20
 - (e) A tourist service referred to in section 12;
 - (f) A charter service referred to in section 13;
 - (g) A staff service referred to in section 14;
 - (h) A courtesy service referred to in section 15;
 - (i) A coach-type schedule service referred to in section 16; 25
 - (j) A shuttle service referred to in section 17;
 - (k) Limousine-type services referred to in section 18;
 - (l) Chauffeur driven services referred to in section 19;
 - (m) Adapted light delivery vehicle referred to in section 20;
 - (n) Four plus one-taxi type services referred to in section 21. 30
- (2) The MEC may, by notice in the *Provincial Gazette* and after consultation with the planning authorities, add services to, alter or remove services from the list provided in section 7(1) herein. 35

Metered taxi service

- 8. (1) (a) A metered taxi service must carry not more than eight passengers excluding the driver. 40
- (b) The vehicle contemplated in paragraph (a) must be –
 - (i) equipped with a sealed meter which must be in good working condition for the purpose of determining the fare payable; 45
 - (ii) clearly marked as a meter taxi service in the prescribed manner.

- (2) The MEC, in consultation with the Board, may determine a fare structure for metered taxi services in the area concerned which must be published in the *Provincial Gazette*.
- (3) The MEC, in consultation with the Board, may prescribe a grading system for metered taxi services and determine special markings to be displayed by the various grades of metered taxis and where such a determination is made, it must be stated in the relevant operating license. 5
- (4) Metered taxis may leave their defined areas of operation if – 10
 - (a) they carry the same passengers to and from their destinations;
 - (b) the taxi returns empty; or
 - (c) they are required to do so in terms of a contract approved by the Board. 15

Minibus taxi-type service

- 9. (1) Minibus taxi-type services may be provided only by minibuses and midibuses. 20
- (2) The operating license granted for a minibus taxi-type service must provide that the service is route or network based, except in special circumstances allowed by this Act. 25

Bus-type service

- 10. (1) Bus-type services may be provided only by standard buses, double decker buses and bus trains. 30
- (2) Bus-type services must be scheduled services operating on specified routes or networks according to published tariffs and timetables which, in the case of subsidised services, must be approved by the authority paying the subsidy. 35

Education service

- 11. (1) Education services must be scheduled for the conveyance of learners, students, pre- school children, and supervisors between their places of residence and education, but may include unscheduled trips to and from the educational institutions if these trips are concerned exclusively with education-related activities. 40
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- (2) Education services may be provided by motorcars, minibuses, midibuses, standard buses, double decker buses or bus trains.
- (3) Before considering an application for the granting, renewal, amendments or transfer of an operating license for education services, the Board must – 5
 - (i) submit the application to the relevant school or other educational institutions for comments and recommendations in the prescribed manner, and 10
 - (ii) consider any comments and recommendations that are received.

Tourist service

- 12. (1) All tourist service operators must be registered and accredited in terms of section 21 of the Tourism Act. 15
- (2) No operating license authorising tourist services may be granted unless the Board has obtained and considered recommendations from a Provincial Tourist Registrar as described in section 21 of the Tourism Act. 20
- (3) The recommendation contained in subparagraph (2) must be received from the tourism authority within 90 days; and if no recommendation is received within this period the Board will, after notifying the Provincial Tourist Registrar, take a decision. 25
- (4) All tourist services must be services for leisure only.
- (5) The Board may determine by publication in the *Provincial Gazette*, a maximum number of passengers to be conveyed by a vehicle used for tourist services. 30
- (6) In issuing operating licenses for tourist services, the Board must ensure that it is guided by the demand for the service and that over saturation of the industry is prevented. 35

Charter service

- 13. Charter services may only be provided where passengers are conveyed to a common destination and where the destination, date and time of departure are pre-determined by the person or organisation booking the trip. 40

Staff service

- 14. Staff services may be provided using vehicles approved by the Board, if the operating license granted for the staff service stipulates that the service is route or network based or area bound. 45

Courtesy service

15. A courtesy service may only be provided by an organisation which is not a public transport operator when – 5
- (a) there is no direct charge to the passengers for transport;
 - (b) the organisation provides its own vehicle; or
 - (c) a vehicle is provided by an operator in terms of a contract with that organisation. 10

Coach-type service

16. (1) A coach-type service may be provided only by means of a coach but – 15
- (a) to carry only seated passengers;
 - (b) the service must operate on a scheduled basis on pre-determined routes and with pre-determined tariffs. 20
- (2) The Board may prescribe additional attributes for coaches.

Shuttle service

17. (1) A shuttle service may only be provided only by means of a limousine-type service, motorcar, minibus, midibus, standard bus, double decker bus or coach. 25
- (2) Shuttle service must include a predetermined tariff per route which is advertised in any manner approved by the Board. 30
- (3) The Board may determine by publication in the *Provincial Gazette*, a maximum number of passengers that may be carried by a vehicle used for a shuttle service despite the fact that the capacity of the vehicle is greater. 35
- (4) The Board must prescribe for a shuttle service –
- (a) a limited area or fixed routes for the operation of a shuttle service; and 40
 - (b) whether the service is unscheduled, on demand or a scheduled service.

- (5) The MEC may, in addition to the provisions of this Act, prescribe the circumstances in which an operating licence may be granted for shuttle service.

Limousine-type service 5

18. Limousine-type services may be provided by means of a luxury motor vehicle that is approved by the Board or as limousine with a capacity of four to eight passengers.

Chauffeur driven service 10

19. Chauffeur driven services may be provided by means of a motor vehicle that is approved by the Board with a capacity of one to four passengers.

Adapted light delivery vehicle 15

20. A light delivery vehicle, truck, or any other type of vehicle may be used for public transport services only –

- (a) where the MEC, after satisfying himself or herself that there is no appropriate public transport available in certain areas, makes special provision for such areas; 20
- (b) if it is an adapted vehicle; and 25
- (c) if an operating license for such vehicle is obtained from the operating license board.

Four plus one taxi-type service 30

21. (1) Four plus one taxi-type service must only be provided by motor cars, and the motor cars in this case must be limited to carry not more than five passengers excluding the driver. 30
- (2) The operating license granted for a four plus one taxi-type service must provide that the service is route- or network-based, except in special circumstances allowed by this Act. 35
- (3) The services provided by four plus one taxi-type must be unscheduled services that are not subject to restrictions in respect of fares and timetables. 40

PART 3

FUNCTIONS AND POWERS OF THE MEC

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| Functions and powers of the MEC | 5 |
| 22. In addition to the functions contemplated in this Act, the MEC must – | |
| (a) facilitate and promote the increased utilisation of public transport for the Province; | 10 |
| (b) take the necessary steps to promote co-ordination between planning authorities in the Province, or between such authorities and the Province, with a view to avoiding duplication of effort; | 15 |
| (c) in taking any measures to promote public transport – | |
| (i) promote the reasonable safety of passengers within the broad objectives of land transport; | 20 |
| (ii) encourage efficient and sustainable commercial conduct on the part of transport operators in their provision of public transport services, and encourage competitive tendering for contracts and concessions; | 25 |
| (iii) further a strategic and integrated approach to the provision of public transport; | 30 |
| (iv) further or encourage the efficient use of energy resources, and limit or reduce adverse environmental impacts to the minimum; | 35 |
| (v) where necessary, make arrangements for the transfer of planning functions to planning authorities concerned; | 40 |
| (d) promote public transport so that – | |
| (i) it is effective in meeting user needs; | 45 |
| (ii) it operates efficiently as regards the use of resources; | |
| (iii) the services provided are of an acceptable quality and are readily accessible and are operated in conjunction with effective infrastructure provided at reasonable cost; | 40 |
| (iv) in the operation of public transport services, high priority is given to safety; | 45 |

- (e) strive to ensure that in the promotion of integrated transport due consideration is given to the needs of transport users;
- (f) promote the performance of integrated transport planning in the Province and cause to be prepared a provincial land transport framework in accordance with section 22 of the National Act; 5
- (g) where this Act requires public consultation and participation before taking any decision or performing any official activity, prescribe the procedure to be followed in this regard; 10
- (h) where the National Act so requires, consult with the Minister on such matters prescribed for consultation.

Regulations by MEC 15

- 23.** (1) The MEC may make regulations prescribing –
- (a) the information to be submitted with an application for the granting, renewal, amendment or transfer of an operating license; 20
 - (b) the manner and form in which applications regarding operating licenses must be made;
 - (c) the procedure to be followed by a transport operating license administrative body or the Board in dealing with an application; 25
 - (d) the information to be submitted with an appeal to the Appeal Board against an act, direction or decision of the Board; 30
 - (e) the information to be supplied by the Board or Registrar to the Appeal Tribunal or the appellant in connection with an appeal, and the manner in which and time within which the information must be supplied; 35
 - (f) the procedure to be followed by the Appeal Tribunal in dealing with an appeal;
 - (g) the offences that the Board should take into account in considering applications for operating licenses under section 51 of this Act; 40
 - (h) the numbering of routes and allocation thereof to particular associations or holders, and the form and issuing of distinguishing marks in that regard; 45
 - (i) rules for undertaking education services;

- (j) conflict resolution and arbitration procedures between associations and operators;
- (k) a grading system for operators or drivers involved in public transport services; 5
- (l) norms and standards for public transport in the Province;
- (m) the preparation, revision, updating and implementation of transport plans, in addition to regulations and requirements prescribed under the National Act; 10
- (n) the provision and regulation of the use of public transport facilities in the Province; 15
- (o) requirements in respect of –
 - (i) public transport information;
 - (ii) public hearings and public participation in public transport planning and policy formulation; 20
 - (iii) performance auditing of the progress of planning authorities in implementing public transport policy; 25
- (p) the effect of non-compliance with a time limit prescribed under this Act;
- (q) specifications and requirements to which a motor vehicle used in public transport must conform, in addition to those prescribed by road traffic legislation; 30
- (r) records to be kept by a person engaged in public transport and returns and information to be submitted by such person to the Board or another person or institution; 35
- (s) fees or allowances payable to a person who has been required to appear before the Board or Registrar to give evidence or to produce a book, plan or other document or article; 40
- (t) rules concerning the safety and comfort of passengers on public transport vehicles and related matters;
- (u) the nature and form of a distinguishing mark, identification, operating license, notice or other document issued or required in terms of this Act, including the form, shape, size and colour of, and the information to be contained in, such documents, or empowering the Board or Registrar to prescribe the form thereof; 45

- (v) the manner in which a distinguishing mark, identification, operating license, notice or other document or writing which is required to be displayed or carried on or in a motor vehicle in terms of this Act, or a condition imposed thereunder, must be displayed or carried, and the position thereof on or in the motor vehicle;

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- (w) rules for operational safety of vehicles used in public transport;
- (x) the form of registration certificates for operators and their associations;

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- (y) types of vehicles that may be used for the various types of public transport;
- (z) the minimum number of members associations must have in order to be eligible for registration;

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- (aa) the minimum period for which associations must have existed in order to be eligible for registration;

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- (bb) other additional requirements with which an association must comply in order to qualify for registration;
- (cc) determining the method of inquiry into allegations of improper conduct by registered associations, members or non-members;

25
- (dd) the manner in which an association or non-member must apply for registration, the form in which such applications must be made, the fees payable to the Registrar in respect of an application and annual fees which an association or non-member must pay to the Registrar;

30
- (ee) the provision of training for drivers or operators undertaking public transport services;
- (ff) the transportation of learners, students and educators;

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- (gg) the membership and functioning of local taxi councils and procedures for and frequency of their meetings;
- (hh) requirements and standards for meters to be installed in metered taxis;

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- (ii) annual fees payable by holders of permits or operating licenses that are valid for longer than one year;

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- (jj) any other matter required or authorised to be prescribed in terms of this Act; and

- (kk) any other matter that will promote the purpose and objects of this Act.
- (2) The MEC may make regulations requiring the payment of fees for – 5
 - (a) an application for the granting, renewal, amendment or transfer of an operating license;
 - (b) an appeal to the Appeal Tribunal against an act, direction or decision of the Board; 10
 - (c) the issuing by a transport operating license administrative body of a distinguishing mark or other document or a duplicate thereof,

and prescribe the amount of the fee, the circumstances in which the fees paid will be forfeited or refunded in whole or in part, the amount of a partial refund and the circumstances in which the fees so paid may in the discretion of the Board or the Appeal Tribunal be forfeited in whole or be refunded in whole or in part. 15
- (3) The MEC may prescribe a Minimum Standard Constitution for associations and a Code of Conduct for non-members, and may make additional rules governing the manner in which – 20
 - (a) a registered association and its members must conduct their affairs; 25
 - (b) a registered non-member must consider his or her business.
- (4) Regulations envisaged in this section or any other section of this Act may provide that a person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and liable on conviction to a fine or imprisonment not exceeding six months. 30
- (5) Any regulation made in terms of a law repealed or excluded by this Act and in force immediately before the commencement of this Act with regard to matters in relation to which the MEC is competent to make regulations in terms of this section, is regarded for the purpose of this Act, as regulations made in terms of this section until the MEC makes a superseding regulation under this section. 35

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Integrated land transport information system

24. (1) The MEC must develop, establish and maintain a provincial information system with regard to land transport, based on sound business processes.

- (2) (a) Every planning authority must provide the MEC, in the manner and at the times as prescribed by the MEC, with the information so prescribed about their actions or position with regard to matters so prescribed that are relevant to – 5
- (i) the objectives and purpose of this Act;
- (ii) the provincial land transport policy;
- (iii) the utilisation of funds made available to them by the Department whether directly or indirectly, for the performance of their functions with regard to land transport in terms of this Act. 10
- (b) The Department may, in accordance with an agreement between the MEC and a municipality, act on behalf of the municipality for purposes of paragraph (a) hereof. 15
- (3) The MEC must prescribe the information required for purposes of paragraph (a) of subsection (2) only after consultation with planning authorities. 20
- (4) Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), any information made available under subsection 2(a) which, potentially, is commercially sensitive and may harm the business or commercial interests, or viability of any particular person, organisation or entity, or is of a personal nature that may lead to the invasion of the privacy of any person, may not be so included in that system, nor be specified in such manner that it will lead, directly or indirectly, to the identification of that person, organisation or entity, or to their being so harmed or to their privacy being invaded. 25 30

PART 4

PUBLIC TRANSPORT PLANNING 35

Principles for public transport planning

25. The following principles must apply to public transport planning endeavours in the Province: 40
- (a) integrated, comprehensive planning must occur within a broader developmental vision that integrates transport and spatial planning;
- (b) transport plans must identify modal options; 45

- (c) although transport authorities will not be providers of rail services in the short and medium term, rail aspects must be fully integrated into integrated transport plans in consultation with providers of rail services;
- (d) through-ticketing and similar methods may be used to reduce travel times and enhance convenience for passengers; 5
- (e) transport plans must indicate what special measures have or will be taken to cater for passengers with special needs, such as persons with disabilities. 10

Public transport plans

26. (1) When preparing a public transport plan in terms of section 26 of the National Act the following, among other things, must be considered: 15
- (a) all relevant contracts;
 - (b) routes on which both subsidised and unsubsidised services are undertaken. 20
- (2) Public transport plans must be based, among other things, on the following:
- (a) routes shown in detail as following specified roads or streets, as opposed to point-to-point routes; 25
 - (b) timetables for scheduled services;
 - (c) existing capacity determined on such routes;
 - (d) passenger demand on such routes, 30
- and must include the types of services listed in section 7(1).
- (3) Public transport plans must contain information prescribed by regulation or by other national or provincial legislation. 35
 - (4) Public transport plans must contain the information to enable the planning authority to determine the supply of and demand for services on each route on which public transport services are provided. 40
 - (5) In the process of preparing public transport plans, planning authorities must undertake the prescribed public consultation procedure and must allow interested persons reasonable time to comment and make representation on matters in plans that may affect their interests. 45

Duties of planning authorities relating to planning

27. (1) Each planning authority must enter into contracts with operators of services on routes within its area of jurisdiction for services contemplated in provincial and national policy. 5
- (2) Where there is a need for additional services on a route that have not been and will not be provided in terms of a contract, the planning authority must invite applications to the Board for operating licenses for such services based on its transport plans in accordance with section 51 of this Act. 10
- (3) Planning authorities must ensure, as far as possible, by appropriate recommendations to the Board, that the granting of operating licenses takes place in such a manner that passengers on the relevant routes are supplied with transport, subject to the availability of funds, and that an oversupply of services is avoided. 15
- (4) Where a transport plan shows an oversupply of services on a route, the transport authority must – 20
- (a) not invite applications for new operating licenses on that route;
- (b) request the Board in writing not to issue any new operating licenses, or to amend any operating license to authorize additional services on the route, and 25
- (c) take law enforcement measures or withdraw excess operating licenses in terms of section 51 of the National Act read with this Act, or take any other prescribed steps to bring the oversupply in line with demand. 30
- (5) In planning contracted services, authorities shall consider routes as a whole, in other words, take subsidised and unsubsidised services into account and must where appropriate award contracts that are a combination of subsidised and unsubsidised services. 35

Transitional matters relating to planning

28. (1) A transport plan approved under section 6(1) of the Urban Transport Act, 1977 (Act No. 78 of 1977) and any regional transport plan drawn up by a regional services council in terms of the Regional Services Councils Act, 1985 (Act No. 109 of 1985) remain in force until amended or replaced by relevant transport plans under the National Act. 40

- (2) Any public transport record prepared in terms of section 3 of the National Land Transport Interim Arrangements Act, 1998 (Act No. 45 of 1998) is deemed to be such a record required by section 23 of the National Act.
- (3) For the purpose of practical arrangements arising from subsection (1), the MEC may by agreement allocate responsibilities to particular planning authorities by notice in the *Provincial Gazette* which notice must contain the responsibilities together with the agreement. 5

PART 5

10

TRANSPORT AUTHORITIES

Agreements for formation of transport areas and transport authorities

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- 29. (1) Transport authorities may be established for transport areas by written founding agreement between –
- (a) the MEC and a municipality; or 20
- (b) the MEC and municipalities whose areas of jurisdiction fall wholly or partly within the transport area.
- (2) If the MEC provides funding for the transport authority, the MEC must be a party to the founding agreement contemplated in subsection (1), but only in relation to those issues for which such funding is provided. 25
- (3) The functions of the transport authority must, in relation to those of the municipalities involved, comply with the Constitution and with sections 84 and 85 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998). 30
- (4) Transport authorities may be established if their effect is to improve transport service delivery in the local sphere of government by grouping transport functions into a single, well-managed and focused institutional structure. 35
- (5) The parties to a founding agreement may agree to amend the boundaries of the transport area concerned, provided that should such amendment involve the area of an additional municipality, the transport authority, if already established, must be dissolved in terms of section 71 of the National Act, read with section 35 of this Act and reconstituted thereafter. 40

Declaration of transport areas and concomitant establishment of transport authorities

- 30.** (1) The MEC must, by notice in the *Provincial Gazette*, and within 14 days of the conclusion of the founding agreement contemplated in this Act – 5
- (a) publish the founding agreement; 5
 - (b) declare the area concerned to be a transport area, and assign to it the name provided for in that agreement; 10
 - (c) where applicable, withdraw, in the manner provided for in section 3(1)(c) of the Urban Transport Act, 1977 (Act No. 78 of 1977), the notice by which the area or areas of the municipality or municipalities concerned had been included in the relevant MTA under section 3(1)(a) or (b) of the Urban Transport Act; and 15
 - (d) in accordance with and subject to the founding agreement, establish for that transport area a transport authority with effect from the date specified for that purpose in the founding agreement. 20
- (2) Upon its publication, a founding agreement assumes the force of law, and no amendment thereof has any legal force or effect until the amendment is published by notice in the *Provincial Gazette* by the MEC. 25

Contents and essential of founding agreements

- 31.** The founding agreement must be in writing and must provide at least for the following: 30
- (a) a declaration by the contracting parties affirming their agreement on the establishment of a transport authority for the transport area concerned; 30
 - (b) the name to be assigned to the transport area; 35
 - (c) the date with effect from which that transport authority is to be established; 35
 - (d) the establishment and structure of a governing body for that transport authority, the number of its members and the manner in which they are to be designated and appointed, but, only a person who serves as a councillor of a municipality party to the founding agreement (hereafter called a participating municipality), may be designated and appointed a member of the governing body; 40

- (e) the designation or appointment of a chairperson and deputy chairperson for the governing body;
- (f) voting procedures and members' voting rights at meetings of the governing body and any committee thereof, where applicable, and mechanisms and procedures for breaking deadlocks in decision-making; 5
- (g) the appointment or designation of a Chief Executive Officer for that transport authority, and the responsibilities, functions and powers attached to that office; 10
- (h) the powers of the governing body that may be designated to any of its members or to the Chief Executive Officer of that transport authority;
- (i) the venue for the head office of that transport authority and for meetings of its governing body; 15
- (j) in the case where the transport area consists of the jurisdictional areas, or parts of the jurisdictional areas, of two or more participating municipalities: 20
 - (i) the contribution of each participating municipality to the funding of that transport authority;
 - (ii) the performance of the professional, technical, administrative, clerical, secretarial and other work arising from, necessary for, or relevant or incidental to, the exercise and performance by that transport authority of its powers and functions in terms of this Act; 25
 - (iii) subject to this Act, the requirements to be observed and procedures to be followed by any participating municipality that wants to withdraw from that transport authority, and its responsibilities, duties and obligations with regard to the then current or outstanding commitments and liabilities of that authority; 30
 - (iv) the procedures to be followed for and pursuant to the voluntary dissolution of that transport authority, subject to section 10 (13) of the National Act; and 35
 - (v) the arrangements made for the performance of the professional, technical, administrative, clerical and other work of the transport authority in terms of section 47 of this Act, if not already covered under paragraph (j)(ii). 40

Functions and competencies of transport authorities

32. (1) Subject to legislation applicable to local government, a transport authority must perform the functions assigned to it by this Act and those assigned by section 10(13) of the National Act. 5
- (2) The following functions may be performed with the agreement of the MEC or where applicable, MECs:
- (a) promote security in public transport; 10
 - (b) encourage and promote the optimal use of the available travel modes so as to enhance the efficiency of the transport system and reduce travelling time and costs; 15
 - (c) develop, operate and maintain a land transport information system; 15
 - (d) market and promote and assume responsibility for publicity associated with the public transport system; 20
 - (e) provide information to users or potential users of public transport; 20
 - (f) in the case of subsidised services, determine fare structures and fare levels, and concessionary fares for special categories of passengers, and periodically adjust fares in consultation with stakeholders, if the MEC has entrusted the subsidy function to the transport authority; 25
 - (g) in the case of unsubsidised public transport services, set minimum fares; 30
 - (h) make payments to public transport operators operating public transport services in terms of subsidised service contracts and concessionary fare agreements to which it is a party, if the MEC has entrusted this function to the authority; 35
 - (i) institute and conduct investigations into the financial circumstances and operating practices of –
 - (i) persons who, at the time, are existing or potential operators of public transport services in relation to or in the transport area; or 40
 - (ii) the holders of operating licenses who, at the time, are operating public transport services in relation to that area, and, if the holder is a company belonging to a group of companies, also into those circumstances and practices of any other company in that group of companies; 45

- (j) introduce or establish or assist in or encourage, promote and facilitate the introduction or establishment of integrated ticketing systems and determine or prescribe measures for the regulation and control of revenue-sharing among operators involved in that system; 5
 - (k) exercise control over service delivery through –
 - (i) the setting of operational and technical standards, and monitoring compliance therewith; and 10
 - (ii) the monitoring of contracts and concessions;
 - (l) develop, implement and monitor a strategy to prevent, minimize or reduce any adverse impacts of the land transport system on the environment; 15
 - (m) in agreement with relevant participating municipalities –
 - (i) take over functions relating to municipal roads; 20
 - (ii) apply measures to limit damage to the road system in that part of the transport area.
- (2) The MEC and a transport authority may agree – 25
 - (a) that different functions be undertaken in rural areas as opposed to urban areas in the transport area concerned; or
 - (b) in the case of a district municipality being a participating municipality that is a Category C municipality contemplated in section 155(1) of the Constitution, that different functions may be undertaken within the areas of jurisdiction of the Category B municipalities in the area concerned, as opposed to areas outside of such areas. 30
- (3) The transport authority must, with a view to ensuring co-ordinated transport law enforcement within its area, liaise on a continuous basis with the South African Police Service, the relevant provincial and municipal law enforcement authorities or agencies, and the inspectors appointed and serving under the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998). 35
- (4) A transport authority may, with the agreement of a participating municipality, assume co-responsibility for or assist the participating municipality in the application of traffic management techniques aimed at improving road traffic movement in that part of the transport area that coincides with the jurisdictional area of that participating municipality. 45

- (5) (a) Whenever a transport authority –
- (i) fails to perform its functions in terms of subsection (1);
 - (ii) having undertaken a voluntary function contemplated in subsection (2) fails to perform it; or 5
 - (iii) fails to perform such a function properly and effectively in accordance with this Act and applicable provincial laws, 10
- the MEC, by notice in writing addressed to the transport authority through the latter's governing body or Chief Executive Officer, must order that authority to remedy its default and perform the function concerned, or, as the case may be, to perform it properly and effectively, not later than the date stated in the notice. 15
- (b) The governing body and the Chief Executive Officer of the transport authority are responsible to ensure that authority's speedy compliance, with that direction. 20
- (c) If the transport authority fails to remedy its default within the period allowed therefore in the notice, the MEC must –
- (i) intervene by taking steps to have the function performed by the Department or any other body or person that has the capacity to do so, subject to section 139 of the Constitution; and 25
 - (ii) allocate funds from the provincial revenue fund that are earmarked to the transport authority, to pay costs arising from taking those steps, or recover those costs from the transport authority. 30

Ancillary powers of transport authorities

33. (1) A transport authority may enter into an agreement with a municipality that is not a participating municipality in terms of which the transport authority may exercise or perform on behalf of that municipality, any power or function in relation to transport entrusted to the municipality by or in terms of this Act or applicable provincial laws. 35 40
- (2) The transport authority may only enter into such an agreement if it is competent in terms of this Act and applicable transport legislation to exercise or perform the same or a similar power or function with regard to its transport area. 45

- (3) An agreement in terms of subsection (1) may involve the utilisation of funds of transport authority outside of its transport area, if the MEC and the member of the executive council responsible for finance both agree.
- (4) In addition to the powers conferred on it by or in terms of this Act and by or in terms of any provincial laws, a transport authority may perform any legal act or do anything which a juristic person is competent in law to perform or do, except in so far as may be inconsistent with this Act. 5

Governance of transport authorities 10

34. (1) A transport authority is governed and controlled by the governing body established for it in accordance with the founding agreement in force in respect of that authority which must consist of councillors of the constituent municipalities. 15
- (2) The governing body represents the transport authority and all lawful acts performed by the governing body or anyone duly authorised by that body to act in its place, are the acts of that authority. 20
- (3) The governing body must consist solely of councillors of the constituent municipality or municipalities, the number of which is determined in the founding agreement.
- (4) The term of office of the governing body is 5 years provided, that members of the governing body may be re-appointed for another term. 25
- (5) No member of the governing body may participate in the deliberation of any matter in which he has a direct or indirect personal and/or pecuniary interest. 30
- (6) If at any stage it appears to any member that he has or may have an interest contemplated in subsection (5), the member must forthwith –
- (a) disclose the interest to the governing body for the latter to determine the issue; 35
 - (b) in consultation with the governing body, recuse himself from the proceedings of the governing body disposing of the matter. 40

Dissolution of transport authorities

35. (1) (a) Subject to paragraph (b) of this subsection, a transport authority may be dissolved only as provided for in this section.

- (b) Paragraph (a) does not affect the capacity of the MEC for Local Government when acting in terms of section 14 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), to make any arrangements having the opposite effect, nor does it detract from the legal force and effect of any arrangements so made. 5
- (2) A transport authority must be dissolved in terms of subsection (1) if the following requirements have been met:
 - (a) where there is only one municipality party to the transport authority, and has decided to terminate its participation in the transport authority and has notified the MEC in writing of the decision; 10
 - (b) where there are two or more municipalities party to the transport authority: 15
 - (i) the municipalities concerned have agreed in principle that the transport authority be dissolved, and have so notified the MEC of that fact; 20
 - (ii) one or some, as the case may be, of those municipalities has or have decided to terminate its or their participation in that transport authority as the case may be, and every municipality that has so decided, has so notified the MEC and the other municipality, or, each of the other municipalities as the case may be, of the decision; 25
 - (c) the MEC, within 30 days after having been so notified, has:
 - (i) by notice published in the *Provincial Gazette* and a newspaper generally read in the transport area affected by that notification, made known the proposed dissolution of the transport authority concerned; 30
 - (ii) invited interested parties to comment and make representations with regard thereto; and 35
 - (iii) requested them to furnish those comments and representations, in writing to the MEC by the date specified in that notice, but a period of at least 30 days must be allowed for that purpose; 40

- (d) if all the parties to the transport authority have entered into an agreement in terms of which arrangements are made, with due regard to the comments and representations, if any, furnished in response to the MEC's notice in terms of paragraph (c), with regard to the matters listed in section 10(13) of the National Act, but the date of dissolution must be so determined as to allow opportunity for sufficient notice being given in accordance with subsection (4). 5
- (3) If the MEC and the municipality or the municipalities, as the case may be, party to that authority fail to reach agreement on any of the matters mentioned in subsection (2) – 10
 - (a) the matter or matters concerned must be determined by arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), and the arbitrator's determination is final and binding; 15
 - (b) the arbitrator's determination is regarded for the purposes of subsection (2) as being part of the agreement contemplated in paragraph (d) of subsection (2) or, where applicable, as constituting that agreement. 20
- (4) The MEC must, within 30 days of the date of an agreement contemplated in subsection (2) or (3), by notice in the *Provincial Gazette* and a newspaper generally read in the transport area concerned, make known the dissolution of the transport authority and publish the terms of that agreement, but the date of dissolution must be so determined as to allow opportunity for sufficient notice being given. 25

Finance of transport authorities

- 36. (1) A transport authority must utilize funds received – 30
 - (a) from the Minister under section 15(1)(b) of the National Act;
 - (b) from the province under section 16(1)(b) of the National Act; and 35
 - (c) from participating municipalities under section 17 of the National Act,
- for the performance of that authority's functions in terms of this Act or a replacing provincial law, to meet the expenditure incurred by it in the performance of work arising from or otherwise connected with those functions or the performance thereof and to give effect to the National and Provincial Land Transport Policy. 40

- (2) Every transport authority must –
- (a) conduct its affairs in an effective, economic and efficient manner so as to optimise the use of its resources in addressing the land transport needs of the community in its area and those travelling to and from that area; 5
 - (b) conduct its financial affairs in an accountable and transparent manner and have proper accounting records kept in accordance with generally accepted accounting practice; 10
 - (c) prepare a financial plan as an integral part of its transport plans;
 - (d) structure and manage its planning, administration and budgeting processes in a manner that gives priority to the basic transport needs of the community in its area and those having to be moved to and from that area, and that supports the implementation of national and provincial transport policy; 15
 - (e) manage its financial resources in a manner that enables it to meet its objectives and make them sustainable; and 20
 - (f) regularly monitor and assess its progress in achieving the objectives set out in its transport plans. 25
- (3) Subject to the approval of the governing body, the Chief Executive Officer of the transport authority must open a bank account in the name of the authority with a registered banking institution in which all moneys received by the authority are to be deposited and from which its expenses are to be paid. 30
- (4) Every transport authority must establish and maintain an internal audit and control system with a view to ensuring proper financial control.
- (5) A transport authority, in awarding contracts for goods and services, must apply a system which is fair, equitable, transparent, competitive and cost-effective, and which is in accordance with the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), and relevant provisions of the legislation that regulates procurement in municipalities, which will apply with the changes required by the context. 35
40
- (6) The financial and fiscal matters may, among others, relate to:
- (a) the financial records and accounts to be kept and the financial statements to be prepared; 45

- (b) the auditing of those records, accounts and financial statements which may only be audited by a person registered and practicing for own account as a public accountant and auditor;
 - (c) the time allowed for the submission of its audited financial statements to the governing body, the participating municipalities and the MEC; 5
 - (d) consequences and procedures where persons cause the transport authority financial loss or damage, or where unauthorised expenditure has been incurred; 10
 - (e) procedures to be followed and measures to be taken to remedy the situation where the financial position of a transport authority has unduly deteriorated; 15
 - (f) procedures applicable to the preparation and compilation of the budgets of transport authorities;
 - (g) procedures and requirements for the procurement of goods and services, subject to subsection (4); 20
 - (h) the investment of the moneys of transport authorities; and
 - (i) the charging of fees for or the generating of revenue from services rendered by transport authorities. 25
- (7) The financial year of transport authorities must coincide with the municipal financial year. 30

Delegations by the governing body

37. (1) The governing body of a transport authority may delegate any of its powers or functions in terms of this Act except the power of governance contemplated in section 34 of this Act and the power conferred by this subsection to any member of that governing body. 35
- (2) Any delegation of a power or function in terms of this section does not prevent the governing body from exercising that power or performing that function. 40

Provisions applicable to delegations

38. (1) A delegation by the governing body – 45
- (a) may be made on and subject to any terms and conditions determined by the governing body;
 - (b) may be given together with the power to sub-delegate on and subject to any conditions so determined, if any; 50

- (c) must be in writing and must contain full particulars of the matters being delegated and of any conditions attached to the delegation, and, where the power of sub-delegation is conferred, must state that fact as well as any conditions attached. 5
- (2) The governing body may at any time –
 - (a) amend or revoke a delegation made under this Act;
 - (b) withdraw any decision made by the delegatee with regard to a delegated matter, and decide the matter itself but a decision made by a delegatee may not be withdrawn where it confers a right or entitlement on any third party. 10
- (3) If the MEC is satisfied that the interests of land transport in the Province or the transport area so require, the MEC must by notice in the *Provincial Gazette* – 15
 - (a) prohibit the delegation of any particular power or function, whether generally or in the circumstances specified in the notice; 20
 - (b) limit the circumstances in which any particular power or function may be delegated;
 - (c) prescribe conditions for the delegation of any particular power or function; 25
 - (d) in relation to any power or function specified in the notice, prohibit sub-delegation in the event of the governing body delegating that power or functions. 30

Transport executives

39. (1) The parties to a founding agreement may provide therein – 35
- (a) that the professional, technical, administrative, clerical and other work arising from, necessary for, associated with or incidental to the functioning of the transport authority in terms of this Act or the exercise or carrying out of its powers and functions thereunder, is to be performed for the transport authority by the municipal administration of one of the participating municipalities specified in that agreement or any one or more specified Departments in the municipal administration of one or more participating municipalities so specified and in the latter case the relevant provisions of the legislation regulating local government, apply; or 40
- 45

- (b) for the establishment by the transport authority of a body under its auspices and subject to its control (hereafter called a transport executive), to perform all work of that nature or any specified type or category of that work for the transport authority. 5
- (2) Where the founding agreement provides for the establishment of a transport executive –
- (a) provisions may also be made in that agreement that the transport authority, if requested thereto by another transport authority, may make its transport executive available to perform work of that nature for that other authority – 10
 - (i) in terms of a written agreement entered into between the transport authorities concerned; 15
 - (ii) for a fee or against payment of an amount specified in that agreement; and
 - (iii) in accordance with and subject to – 20
 - (aa) the standard terms and conditions, if any, stipulated in the founding agreement; and
 - (bb) the terms and conditions specially stipulated in that agreement; and 25
 - (b) provision must be made at least for the following:
 - (i) where not all the professional, technical, administrative, clerical and associated work of the transport authority is to be performed by the transport executive, specification of the type or category of work for the performance of which the transport executive is to be responsible; 30
 - (ii) the place where the offices of the transport executive will be situated; 35
 - (iii) the manner in or procedure according to which the staff establishment of the transport executive is to be determined; and 40
 - (iv) the repository of the power to appoint and dismiss its staff.

Joint transport executives

40. (1) The MEC and any two or more transport authorities authorised thereto by their respective participating municipalities may enter into an agreement providing for the formation of a transport executive under the auspices of those transport authorities jointly, to perform, for each of them, the professional, technical, administrative, clerical and other work arising from, necessary for, associated with or incidental to its functioning as transport authority in terms of this Act and exercising or carrying out its powers and functions thereunder (hereafter called a joint transport executive). 5 10
- (2) In an agreement envisaged in subsection (1) provision must be made for at least –
- (a) the powers of the participating transport authorities with regard to the exercise of supervision and control over their joint transport executive; 15
- (b) the contribution of each participating transport authority to the funding of their joint transport executive; 20
- (c) the matters referred to in section 39(2), which with the changes required by the context, apply in relation to a joint transport executive. 25

PART 6

JOINT ROUTE MANAGEMENT COMMITTEE

Establishment of Joint Route Management Committee 30

41. (1) The MEC must by notice in the *Provincial Gazette*, establish a joint route management committee and determine the route or network of routes over which it will have jurisdiction. 35
- (2) A joint route management committee must consist of the prescribed number of representatives of each relevant local transport forum and the other members as prescribed.
- (3) The functions of a joint route management committee are as prescribed. 40
- (4) The MEC must appoint a chairperson and vice-chairperson for a joint route management committee on recommendation of its members.
- (5) If both the chairperson and vice-chairperson are absent from a meeting of a joint route management committee, the members present must elect one from among their number to preside at that meeting. 45
- (6) The quorum for a meeting of a joint route management committee is the majority of the members of the committee. 50

- (7) A joint route management committee must endeavor to reach all decisions on the basis of consensus: Provided that if consensus on any matter cannot be achieved, the decision of the majority of the members present at a meeting of the committee must prevail. 5
- (8) In the event of an equality of votes on any matter, the chairperson has a casting vote in addition to his or her deliberate vote.
- (9) Except as provided by this section, a joint route management committee determines the procedure applicable at its meetings. 10
- (10) The MEC may co-operate with or enter into agreements with a competent authority in other provinces to obtain the representatives from those provinces on joint route management committees that have jurisdiction over routes that cross the border of the Province. 15

PART 7

PROVINCIAL OPERATING LICENSING BOARD

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Establishment and constitution of the Free State Transport Operating Licensing Board

- 42. (1) The Board established under section 2 of the Free State Interim Passenger Transport Act, 1998 (Act No. 16 of 1998) is deemed to be the Board referred to in section 30 (1) of the National Act and is called the Free State Transport Operating Licensing Board. 25
- (2) The Board consists of a chairperson and the number of other members determined by the MEC, who must be persons who possess wide experience of, and have shown ability in, public transport, industrial, commercial, financial or legal matters or in the conduct of public affairs. 30
- (3) The members of the Free State Permit Board appointed before the commencement of this Act must continue in office as members of the Board until their period of appointment expires, unless the MEC terminates their appointment earlier. 35
- (4) The MEC must – 40
 - (a) before appointing members of the Board, publish a notice of intention to do so, and invite applications for membership, in at least one newspaper circulating in the Province, in English and at least one other official language widely spoken in the Province; 45
 - (b) before appointing any such member, publish, in the same manner referred to in (a), the names of the persons he or she intends to appoint to the Board, and invite comments and representations in that regard;

- (c) give due consideration to any comments and representations so received.
- (5) A person may not be appointed or remain as a member of the Board if he or she – 5
 - (a) or his or her spouse or partner, immediate family, dependants, business partner or employer, has a financial interest in a business of public transport or is an elected office bearer in an association, or is engaged in an activity which, in the opinion of the MEC, will interfere with the impartial discharge of the functions of his or her office; 10
 - (b) is a minor and/or mentally incapable of handling his own affairs; 15
 - (c) is an unrehabilitated insolvent; or
 - (d) has been convicted of an offence involving dishonesty or has been removed from public office due to misconduct. 20
- (6) When the appointment of any person as a member of the Board is considered, that person must disclose to the MEC, in writing, any interests which he or she may have in any part of the public transport industry, and failure to do so will constitute an offence. 25
- (7) The chairperson of the Board must be appointed for a period not exceeding three years, and other members of the Board for periods not exceeding two years, and, subject to this Act, hold office on conditions as to remuneration and otherwise as the MEC may determine when they are appointed. 30
- (8) When the office of chairperson of the Board or a Board member is not occupied or has become vacant, the MEC must take immediate steps to fill the vacancy by the appointment, in accordance with this section.
- (9) A person whose period of office as a member of the Board has expired is eligible for re-appointment. 35
- (10) The MEC must, subject to the laws governing the Public Service, provide the staff necessary to assist the Board in the performance of its functions. 40

Resignation, vacation of and removal from office of Board members

43. (1) A Board member may resign on two months' written notice to the MEC.

- (2) The MEC may remove from office a member of the Board –
- (a) who has failed to comply with a condition of his or her appointment; 5
 - (b) who is guilty of improper conduct, has regularly neglected his or her duties as a member of the Board or has failed to discharge those duties fairly and impartially;
 - (c) who is unable to perform efficiently his or her duties as a member of the Board; 10
 - (d) who has failed to attend three consecutive meetings of the Board without good reason. 15
- (3) A member of the Board must vacate his or her office if the member –
- (a) becomes subject to any of the disqualifications for appointment mentioned in section 42 (5) of this Act; 20
 - (b) is removed from office under subsection (2).

Powers of the Board

44. (1) Apart from the other powers conferred by this Act, the Board may – 25
- (a) investigate a matter falling within the scope of this Act, and submit recommendations thereon to the MEC;
 - (b) consider and give a decision on, or otherwise deal with, in accordance with this Act, an application made to it thereunder –
 - (i) for the granting of an operating license authorising public transport within the Free State; 35
 - (ii) for the granting of an operating license authorising such transport which commences in the Free State and also takes place in another province in agreement with the Board of the other province; 40
 - (iii) for the renewal, amendment or transfer of an operating license granted by it;
 - (c) issue, in accordance with the provisions of this Act, an operating license granted, renewed, amended or transferred by it; 45

- (d) for the purpose of dealing with a matter before it in terms of this Act –
 - (i) in its discretion allow a person affected by or interested in the matter, or the duly authorised representative of that person, to appear before it and –
 - (aa) give evidence or make oral representations relevant to the matter; 5
 - (bb) call witnesses and lead evidence on a question relevant to the matter; or 10
 - (cc) question a person who testified as a witness in the matter; 15
 - (ii) by written notice as prescribed and served in the manner prescribed, require a person to appear before it to give evidence or to hand over a book, plan or other document or article in his or her possession or under his or her control; 20
 - (iii) call upon a person present at the place where the Board deals with the matter, to appear before it to give evidence or to hand over a book, plan or other document or article in his or her possession or under his or her control; 25
 - (iv) question a person appearing before it as a witness;
 - (v) refuse to hear a person appearing before it as a witness who refuses to be sworn in or to be affirmed. 30
- (2) The person presiding at a meeting of the Board at which a person appears as a witness as referred to in subsection (1), may administer an oath or affirmation to the person so appearing. 35
- (3) The Board must provide interested parties on request with written reasons for a decision it has taken.

Meetings and decisions of the Board

- 45. (1) Meetings of the Board must be held according to the prescribed procedures and at the prescribed times and places. 40
- (2) The majority of members of the Board form a quorum for meetings of the Board. 45

- (3) The decision of the majority of the members of the Board present at a meeting constitutes the decision of the Board in respect of those proceedings and in the event of an equal number of votes, the person presiding at the meeting has a casting vote in addition to his or her deliberative vote. 5
- (4) If the chairperson of the Board is unable to attend a meeting of the Board, the chairperson may designate another member of the Board to act as chairperson at that meeting. 10
- (5) No act, direction or decision of the Board may be held to be invalid by reason of the fact that, when the act was performed or the direction or decision was given, a vacancy existed on the Board or a person was a member of the Board who was disqualified under section 42(5) from being a member while the Board was not aware, whether or not that person's concurrence was necessary to the performance of that act or the giving of that direction or decision. 15

Establishment of Advisory Panel to the Board

- 46. (1) The MEC may, if requested by the Board, establish an Advisory Panel called the Free State Operating Licensing Board Advisory Panel to advise the Board. 20
- (2) The Advisory Panel advises the Board only when so requested by the Board and if so requested, the panel must provide only advice of a general and policy nature. 25
- (3) (a) The Advisory Panel consists of the following members, who must be nominated by their respective organisations, either registered in terms of this Act or recognized by the MEC, to be appointed by the MEC: 30
 - (i) one representative from the Department; 35
 - (ii) one representative from each metropolitan and/or district authority;
 - (iii) one representative from the minibuss taxi industry; 40
 - (iv) one representative from the metered taxi industry;
 - (v) one representative from the organized bus industry;
 - (vi) one representative from the emerging or small bus industry; 45
 - (vii) one representative from the rail commuter industry;
 - (viii) one representative from providers of education services;

- (ix) one representative each from other types of public transport services defined in this Act, if so decided by the MEC;
 - (x) not more than three persons capable, in the opinion of the MEC, of representing the interests of passengers, each representing passengers from a different category of service; 5
 - (xi) not more than three representative from organized labour relating to the public transport industry, each representing workers from a different category of service. 10
- (b) If one of the appointed representatives referred to in paragraph (a) is unavailable, the organisation concerned may substitute such representative, but such substitution may not be permanent. 15
- (4) The chairperson of the Board is the chairperson of the Advisory Panel.
- (5) The Advisory Panel must designate one of its members to act as chairperson when the chairperson is unable to attend the meeting of the Advisory Panel. 20
- (6) The Advisory Panel members must be called together on an *ad hoc* basis as required by the Board, but must hold at least two meetings per year.
- (7) A member of the Advisory Panel who is a member of the Public Service must hold office when required to do so by the MEC, and other members must be appointed for a period not exceeding two years and must, subject to the provisions of this Act, hold office on such conditions and on such remunerations as the MEC may determine when the member is appointed. 25

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Establishment of transport operating license administrative bodies

- 47.
- (1) The MEC must designate one or more departmental officials to be stationed at the offices of each District Municipality to fulfil the functions of transport operating license administrative bodies, in the manner prescribed. 35
 - (2) The transport operating license administrative body must –
 - (a) receive completed application forms for operating licenses in respect of services commencing in its area together with the application fees; 40
 - (b) check whether the application forms have been properly completed;

- (c) check that all the necessary accompanying documentation have been submitted and is valid and acceptable; and
 - (d) enter details of the applications into the relevant data banks in the manner prescribed. 5
- (3) The transport operating license administrative body must submit the applications to its authority, relevant municipalities in the area, the relevant forum and relevant liaison committees for recommendations in the prescribed manner. 10
- (4) In making recommendations, authorities must ensure that the application is in accordance with relevant transport plans and other relevant transport and land use plans and consider factors such as demand or needs on a route basis. 15
- (5) If no forum or liaison committee exists in respect of a route or area at the relevant time, the transport operating license administrative body must submit the application for comment and recommendations to all relevant associations, unless the association has already provided comments on the application form. 20
- (6) The transport operating license administrative body must collect all the representations and submit them with the application form and other supporting documentation to the Board for a decision. 25
- (7) Where the proposed transport will also take place in the area of another transport operating license administrative body, the first transport operating license administrative body must submit the application to the other transport operating license administrative body, which must take steps referred to in subsection (3) to (6) and return the application with applicable recommendations to the first transport operating license administrative body. 30
- (8) Where a Board of another province has referred an application to the Board for comment in respect of an applicant based in another province, the Board must refer the application to the relevant transport operating license administrative body for the latter to obtain the comments and recommendations referred in subsection (3). 35
- (9) The comments and recommendations referred to in subsection (8) must be made within 90 days or within such reasonable time as agreed to by the parties. 40

PART 8

OPERATING LICENSES

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| Conversion of permits to operating licenses | 5 |
| 48. | |
| (1) Permits remain valid until a date determined in terms of section 32 (2) of the National Act. | |
| (2) Permits must be converted to operating licenses issued under the corresponding provisions of this Act by the date mentioned in subsection (1), failing which they lapse. | 10 |
| (3) Permits that have not been in use during the period determined by the MEC by notice in the <i>Provincial Gazette</i> will not be converted to operating licenses and will lapse on the date specified in such notice. | 15 |
| (4) In the case of a permit issued for a definite period, the operating license is valid for the unexpired portion of the validity period of the permit or if it expires before finalisation of the conversion process, until such process is finalised in relation to the relevant region. | 20 |
| (5) In the case of a permit issued for an indefinite period, the operating license is valid for an indefinite period, subject to the provisions of this Act relating to withdrawal, suspension, amendment and lapsing of permits or operating licenses. | 25 |
| (6) A permit may not be converted to an operating license unless a valid certificate of fitness or a roadworthy certificate is presented for the vehicle concerned and section 6 (4) of this Act applies in this regard. | 30 |
| (7) Permits for scheduled services that authorize operation within a defined area must be converted to operating licenses that specify each route in detail and the timetables for such routes. | 35 |
| (8) Permits for scheduled services provided in terms of interim contracts and current tendered contracts must be converted to operating licenses specific to such contracts. | |
| (9) Permits for unscheduled services, excluding metered-taxi services that authorize operation within a defined area or radius must be converted to operating licenses that specify the route or routes in detail, but a defined area may be authorised in exceptional circumstances, such as informal settlements where there are no defined roads. | 40 |

- (10) Permits for metered taxi services must be converted to operating licenses that specify a defined area of operation for picking up passengers, subject to section 6 (4) of this Act.
- (11) The procedure for and manner of lodging application to be made under subsection (2) will be as prescribed. 5

Contracts for services

- 49. (1) A contracting authority may not enter into a subsidised or unsubsidised service contract otherwise than by accepting a tender in accordance with regulations made by the MEC, subject to the National Act. 10
- (2) Contracts will be awarded by the Department or relevant transport authority in accordance with such transport plans, subject to section 52(7) of this Act which applies with the necessary changes. 15

Lapsing and cancellation of operating licenses and permits in relation to contracts

- 50. (1) When any contract terminates, all permits or operating licenses in terms of which the services were provided under the contract lapses on the date of termination and must be surrendered to the Board within seven days of lapsing. 20
- (2) Where tenders are invited for a subsidised service contract – 25
 - (a) no operator may tender for such a contract unless the operator surrenders to the Board for cancellation, all permits and operating licenses held by such operator authorising services on the routes involved in such services; 30
 - (b) the Board, at the request of the contracting authority, must withdraw any permit or operating license authorising services on the routes involved in such contract, provided that the holder is compensated in accordance with the guidelines referred to in section 51(4) of the National Act. 35
- (3) No compensation is payable in respect of the cancellation of an operating license or permit under subsection (2)(a).

Application concerning operating licenses

- 51.** (1) Where a transport plan shows a need for additional services on a route, the planning authority may invite applications to the Board for operating licenses to provide public transport services that are not subject to a contract on that route. 5
- (2) A person or body wishing to undertake a public transport service other than a service referred to in section 65(1) of this Act must apply to the Board for the granting of the appropriate operating license. 10
- (3) A holder may apply to the Board for the renewal or amendment of an operating license.
- (4) A person or body wishing to take transfer of an operating license may apply to the Board with the written consent of the holder for transfer of the operating license. 15
- (5) Applications under subsections (1), (2), (3) or (4) must – 20
- (a) be made on the basis of one application per vehicle;
 - (b) be made in the prescribed manner;
 - (c) be made on the prescribed form; 25
 - (d) be accompanied by the prescribed fee and the costs of publishing the application under section 55(1) of this Act, as estimated by the Board but no fee is payable where the operating license will be based on a contract; 30
 - (e) specify the vehicle/s to be used for providing the services concerned;
 - (f) include a detailed description of the route or routes on which the applicant operates or intends to operate and all points where passengers are being or will be picked up or dropped off; and 35
 - (g) be lodged with the transport operating license administrative body established for the relevant area. 40
- (6) The application form in respect of applications referred to in subsections (1), (2) and (3) in respect of minibus taxi type, metered taxi-type, bus type and four plus one taxi type services must make provision for –

- (a) recommendations from the association operating on the route or the route network in question of which the applicant is a member, which must be completed by the association before submission of the application; 5
 - (b) recommendations from the non-member that he has complied with section 83(1)(e) of this Act to the effect that he applied as a registered non-member.
- (7) Applicants must state on the application form under oath or affirmation – 10
 - (a) whether they have been convicted of criminal offences of a nature prescribed and if so, list the convictions;
 - (b) whether they or their spouses, partners or their immediate family members are officials of the Public Service or Provincial Administration or of a municipal administration; and 15
 - (c) whether they comply with section 38 of the National Act. 20
- (8) (a) The Board must submit applications for non-contracted services to the relevant planning authorities for recommendations, in the prescribed manner, before disposing of the application. 20
- (b) Where other registered associations exist for the type of service involved, the planning authorities must consult it in the prescribed manner before submitting its recommendations to the Board. 25
- (9) The Board may issue, on application in the prescribed manner and on payment of the prescribed fee, an interim operating license for not more than 90 days where a contract has been awarded to the applicant by an organ of state and the relevant operating license referred in section 52(1)(a) of this Act has not been issued on the date of commencement of the contract. 30
- (10) The Board must issue, on application by the holder of a permit or operating license in the prescribed manner and on payment of the prescribed fee, a copy of a permit or operating license, certified by an official of the Board, for use by the holder under section 50(2)(b) of this Act, where an application for the transfer or amendment thereof has been lodged with the Board and is pending. 35 40

Disposing of an application for an operating license

- 52. (1) (a) A tenderer who has been awarded a contract will be entitled to be issued with an operating license for every vehicle that will operate the services authorised by the contract and must apply to the Board in the prescribed manner for such an operating license for the period of the contract. 45

- (b) No application fee will be payable in respect of such an application.
- (2) An official of the Board designated for the purpose by the Board is entitled to issue operating licenses under subsection (1), despite contrary provisions elsewhere in this Act. 5
- (3) Subject to subsection (5), the Board may not grant a new operating license or amend an operating license so as to increase the services provided thereunder, unless the relevant transport plans show a need for the services on the route concerned. 10
- (4) Where a relevant public transport plan shows a need for the service applied for, the Board must grant the application, subject to any conditions imposed in terms of the plan, unless it is of the opinion, with regard to the matters listed in subsection (7)(a) to (d), that the applicant or vehicle is unsuitable or unfit to provide the service. 15
- (5) Where plans have not been prepared or finalized, the Board must have regard to the matters listed in subsection (7)(a) and (b) in deciding whether to grant or refuse an application. 20
- (6) Where more applications for operating licenses are received than the Board may grant in terms of a relevant public transport plan, preference must be given to applicants for renewal of their operating licenses and if the plan can accommodate additional services, regard must be given to the matters listed in subsection (7)(a) and (b) in evaluating the applications. 25
- (7) In deciding whether to grant or refuse an application for the granting, renewal or amendment of an operating license to operate a non-contracted service and in determining conditions to be attached to the operating license, the Board must – 30
- (a) have due regard to and act in accordance with the requirements of the transport authority in respect of its transport plans, if any, and its recommendations in this regard, if any; and 35
- (b) consider –
- (i) whether the make, model, manufacture, condition, capacity and acceptability of the vehicle to which the operating license relates is suitable for the service which it is to operate; 40
- (ii) whether, according to the prescribed criteria, the applicant has the ability to provide the service for which the operating license is sought, in a manner satisfactory to the public; 45

- (iii) all representations duly submitted in respect of the application;
 - (iv) relevant previous convictions for offences committed by the applicant according to prescribed criteria; 5
 - (v) the size of the business operated by the applicant, preferences being given to small business enterprises;
 - (vi) preference being given to previously disadvantaged persons; 10
 - (vii) the number of permits or operating licenses already held by the applicant, preference being given to holders with no or few permits or operating licenses; 15
 - (viii) the length of time that the holder has been a provider of services, preference being given to holders who have provided services the longest;
 - (ix) if the Board so decide, a stand license or similar authority issued under municipal by-laws authorising the use of a rank or stand, or a recommendation from relevant municipalities that ranking space is available; or 20
 - (x) other factors which, in the opinion of the Board, may affect the desirability of granting or refusing the application. 25
- (8) In addition to the disqualifications referred to in section 38 of the National Act, the Board may not consider an application for an operating license from an employee of the transport authority, a law enforcement agency or a firm responsible for monitoring transport services in the area. 30
- (9) Despite other provisions of this Act, applications to substitute a different vehicle with the same or less seating capacity in terms of an operating license may be granted by an official of the Board, after – 35
 - (a) considering whether the new or replacing vehicle is suitable for the services authorised by the operating license and that a valid roadworthy certificate has been issued for it, and the requirements envisaged in section 6(4) of this Act; and 40
 - (b) ensuring that the applicant has supplied the prescribed information, and such an application does not need to be published under section 55 of this Act.

- (10) The Board may refuse to consider an application for the granting, renewal, amendment or transfer of an operating license if it has considered and refused a previous application that was received within six months preceding the date on which the first-mentioned application was received, which in its opinion had the same or substantially the same object as the first-mentioned application. 5
- (11) The Board may, in granting an application, impose conditions which may not be inconsistent with this Act or the National Act. 10

Interprovincial transport

53. (1) Applicants for interprovincial transport must apply to the Board if the services in question commence in the Province. 15
- (2) For the purpose of this section services are deemed to commence at a place where persons board a motor vehicle for the purpose of being conveyed to another place, and to terminate there. 20
- (3) In the case of doubt as to where the services will commence, the applicant must apply in the province where the motor vehicle in question is registered. 25
- (4) The Board may not grant an application for an operating license authorising services which commence in another province, or for the renewal or transfer of the operating license, or for an amendment of the operating license for conducting of services in another province, except with the agreement of the operating license issuing authority established for that province. 30
- (5) Where the Board is unable to obtain the necessary responses from the operating license issuing authority of another province in a referral referred to in subsection (4), or cannot obtain the agreement of the other Board within the 90 days period, the Board must submit the matter as an appeal to the Transport Appeal Tribunal established by the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998) in a manner prescribed in terms of that Act. 35
- (6) Appeals concerning interprovincial services must be made to the Transport Appeal Tribunal as required in terms of the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998). 40
- (7) In the case of interprovincial services, passengers may not be picked up or dropped off except at pick-up points or destination, unless there is no alternative service between the pick-up points or destination and the drop-off or pick-up point, or, in the case of minibus taxi-type, metered taxi type, four plus one taxi type and bus type services, the relevant associations whose members operate on the route or routes have agreed to the contrary. 45

Cross-border road transport

54. Applications for cross-border road transport for international services must be made to the Regulatory Committee in terms of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998). 5

Publication of an application in respect of an operating license

55. (1) Subject to subsection (2), the Board must, before considering an application for the granting, renewal, amendment or transfer of an operating license, publish in the *Provincial Gazette* and also in the prescribed manner, such application on a notice Board at its offices for the prescribed period. 10
- (2) An application need not be published under subsection (1) where it is an application – 15
- (a) to amend the particulars of the same vehicle specified in the operating license; or
- (b) based on a contract referred to in section 52 (1) (a) of this Act. 20
- (3) An interested person wants to submit representations to the Board objecting to or supporting an application published under subsection (1), must do so in the manner and within the time prescribed, and the Board – 25
- (a) must allow a person who, within the time prescribed, submits representations to inspect the applicant's application form and related documents at the office of the Board on payment of the prescribed fee; and 30
- (b) may at the request of such a person, provide him or her with copies thereof on payment of the prescribed fee.
- (4) The Board must allow the applicant to inspect, free of charge, at its offices, and to make copies on payment of the prescribed fee, representations objecting to or supporting the application. 35

Period and renewal of an operating license

56. (1) (a) Operating licenses for vehicles to operate services in terms of contracts must be granted for no longer than the duration and subject to the terms and conditions of the contract. 40
- (b) On termination of the contract, the operating licenses relevant thereto must be returned to the Board within seven days. 45

- (2) Where a contract has terminated and a contract to replace it has not been concluded or the arrangements in regard to the latter contract have not been finalized to enable the holder to commence the relevant services timeously, the Board may, at the request of the contracting authority, extend the validity period of the relevant operating licenses for the period requested by such authority. 5
- (3) Subject to section 48(5) of this Act, operating licenses for vehicles to operate non-contracted services will on the recommendation of the transport authority, be for a fixed period of not more than five years and must have regard to – 10
- (a) current and envisaged trends in demand along the route or routes or in the defined area; 15
- (b) the efficiency or the proposed services in meeting the demand; 15
- (c) the existence of a contract for services that might be affected by the services applied for; 20
- (d) the likelihood that the operating license applied for, may cease to be required in terms of relevant transport plans; and 20
- (e) the likelihood that the service applied for, may be submitted to tender. 25
- (4) Subject to section 52(7)(a) and (b) of this Act, renewal of an operating license for a non-contracted service must not be granted, unless the relevant transport authority, based on the relevant transport plans, recommends such renewal. 30

Issue of an operating license and provisions thereof

57. (1) Subject to subsection (2), the Board must issue, through the relevant transport operating license administrative body and in the manner prescribed, an operating license granted, renewed, amended or transferred by it in terms of this Act, which must be issued, in the case of an application for a new operating license, for the vehicle specified in the application form. 35
- (2) The Board may not issue an operating license unless – 40
- (a) a valid roadworthy certificate issued for the relevant vehicle on or after a date determined in the manner prescribed has been submitted to it, and the requirements envisaged in section 6 (4) of this Act; and 45

- (b) the holder has furnished proof to the satisfaction of the Board that the holder is registered as a taxpayer or not required to register as a taxpayer under the Income Tax Act.
- (3) Operating licenses must specify – 5
 - (a) the holder's name and identity number or its registration number in the case of a company, close corporation, trust or similar body;
 - (b) the registration number, make, vehicle identification number, year of manufacture, type and passenger capacity of the vehicle for which the operating license was granted; 10
 - (c) the types of services for which they were granted; 15
 - (d) the period for which they were granted;
 - (e) in the case of an operating license granted for a vehicle to operate under a contract – 20
 - (i) the type of contract;
 - (ii) the contract reference number;
 - (iii) the names and addresses of the parties to the contract; 25
 - (f) in the case of an operating license granted for a vehicle to operate scheduled services –
 - (i) the points between which a detailed description of the route or routes or the defined area for which it is granted by the specification of street names, road numbers, beacons or land marks for each suburb, town, city, village or settlement; 30
 - (ii) the relevant timetables; 35
 - (g) in the case of an operating license granted for a vehicle to operate minibus taxi-type services –
 - (i) the points between which a detailed description of the route or routes or the defined area for which it is granted by the specification of street names, road numbers, beacons or land marks for each suburb, town, city, village or settlement; 40

- (ii) the authorised pick-up and drop-off points where applicable;
 - (h) other conditions which the Board imposes under section 52(11) of this Act; and
 - (i) other prescribed particulars.
- (4) All operating licenses issued by the Board must be signed by its chairperson or a person designated in writing by the chairperson.
- (5) An operating license may not be hired out except where the vehicle is operated under a sub-contracting arrangement in terms of an unsubsidised service contract or subsidised service contract.

Records of operating licenses

58. The Board must keep at its place of business a duplicate original of every operating licence issued by it and amendments thereto, and must enter prescribed particulars thereof and of the holder of the operating license and relevant vehicles on the prescribed computerized information system.

Temporary replacement of a vehicle to which an operating license or permit relates

59. (1) Where a vehicle used under an operating license or permit has become defective or is not being used temporarily because of a collision or mechanical problems, the Board or an official designated by the Board, may grant written permission for another motor vehicle to be used in its place, subject to subsections (2), (3) and (5).
- (2) The passenger capacity of the replacing vehicle must be of a category that may be used for the service in question.
- (3) The replacing vehicle may be used for a fixed period not exceeding 42 days as the Board or member determines, which period may be extended at the Board's discretion on further application.
- (4) The replacing vehicle must, during the period of replacement, be deemed to be the vehicle for which the operating license or permit was issued.
- (5) The replacement vehicle must have a valid roadworthy certificate.

Duties of the holder of a permit or operating license

60. (1) The holder of a permit or operating license –
- (a) must operate the service authorised by the permit or operating license in terms of its conditions and the applicable transport plans;

- (b) must carry the original or certified duplicate of the original permit or operating license and the holder's registration certificate issued in terms of section 51(10) of this Act, in the motor vehicle and produce them on demand to an authorised officer; but the Board may direct in writing that the annexures to a permit or operating license do not have to be kept in the vehicle where they are so bulky as to make this impractical; 5
 - (c) must keep the permit or operating license and certified duplicate thereof in such a condition that the letters and figures on them are clearly legible and, if the permit or operating license is damaged or ceases to be clearly legible, apply for a duplicate in the manner prescribed; 10
 - (d) may cause the name, address and nature of business of the holder to be borne on the motor vehicle to which the permit or operating license relates, in a conspicuous place in the manner prescribed or in such other manner as the Board may approve in writing in a particular case; 15
 - (e) must exhibit the other particulars prescribed by the Board; 20
 - (f) must affix and keep affixed in the manner prescribed on the vehicle, all distinguishing marks issued in terms of this Act; 25
 - (g) must apply not later than 30 days before expiry of the permit or operating license for renewal thereof in the case of an operating license or, in the case of a permit, for conversion of the permit to an operating license as the case may be, if he or she wishes to renew or convert it; 30
 - (h) must ensure that all information contained in the permit or operating license is kept up to date by appropriate applications for amendments; 35
 - (i) must return to the Board within 14 days the permit or operating license that has been cancelled or withdrawn, or has lapsed; 40
 - (j) must in the case of a long distance service, keep in the vehicle concerned a passenger list in respect of the passengers being carried, in the manner and form as prescribed; 45
 - (k) must inform the Board of any sale of the vehicle or other means by which change of ownership may occur, to which the operating license or permits relates.
- (2) If the person acquiring the vehicle by any of the means contemplated in subsection (1)(k) above intends to use it for public transport, then an operating license must be obtained prior to the acquisition of the vehicle.

Limitations on authority conveyed by an operating license

61. An operating license issued under this Act –

- (a) must not authorize the holder to undertake transport over a public road in area of jurisdiction of a municipality if it is unlawful to do so under an ordinance, regulation or by law of such municipality; 5
- (b) must not exempt the holder from the obligation to comply with a requirement imposed under a law, license or permit issued by another authority. 10

Withdrawal, suspension or variation of an operating license

- 62.** (1) Where an operating license has been granted on the basis of a contract, the contracting authority must request the Board to withdraw the operating license where the contract has been terminated for any reason. 15
- (2) Subject to subsection (3), in the case of an operating license that has not been granted on the basis of a contract, the Board may at any time withdraw, suspend or amend the operating license for such period as it may deem fit, if – 20
- (a) the holder of the operating license or employee of the holder has been convicted of an offence under this Act, a law relating to motor vehicles, the regulation of traffic occupational safety or labour relations; 25
 - (b) in the opinion of the Board, the holder of the operating license has not carried out the conditions of the operating license; 30
 - (c) the holder of the operating license has failed to initiate the service authorised by the operating license or any part thereof within 90 days of the issuing of the operating license; or 35
 - (d) the holder of the operating license has ceased to operate the service or any part thereof for 180 consecutive days.
- (3) The Board may not under subsection (1) or (2) withdraw or suspend an operating license unless – 40
- (a) at least 21 days written notice of its intention to do so, with reasons, has been given to the holder by registered post;
 - (b) the holder has been given an opportunity, either personally or through a representative, to appear before the Board and provide evidence or submit representations in regard to the proposed action; and 45

- (c) the transport authority, or where no transport authority has been designated, the relevant municipality has been given an opportunity to submit representations and make alternative arrangements.

Cancellation of operating licenses not brought into use

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63. (1) Where it comes to the notice of the Board that an operating license converted from a permit or a new operating license has not been brought into use within 180 days after it was issued, the Board must, by notice in writing, call on the holder to advance reasons, to the satisfaction of the Board and within the period stated in the notice for – 10
- (a) not having commenced operating the public transport service to which that operating license relates; and 15
 - (b) why the Board should not cancel that operating license.
- (2) Where the Board is satisfied with the reason advanced, the holder of that operating license will be allowed a further period specified by the Board, but not more than 180 days, to – 20
- (a) commence the operation of that service; and
 - (b) the holder must be informed in writing accordingly. 25
- (3) If not so satisfied, or where the holder has failed to advance reasons within the time allowed therefore in the notice, the Board must –
- (a) cancel the operating license; 30
 - (b) in writing inform the holder accordingly; and
 - (c) direct the holder to surrender that operating license to the Board together with the distinguishing marks with regard thereto, within seven days after the date of the notice. 35

Withdrawal of surplus operating licenses or permits

64. (1) Subject to subsection (2), where the Board is satisfied that – 40
- (a) planning authorities have through their plan determined that there is an oversupply of services on a given route, routes or network;

- (b) the planning authority has negotiated with a holder operating on the route, routes or networks, in consultation with the relevant role players, with a view to procuring the cancellation of excess operating licenses,

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the Board must withdraw the relevant permit or operating license in terms of section 51 of the National Act.

- (2) Agreement must be reached with the holder to compensate the holder for the loss of economic benefits in a fair and reasonable manner calculated in accordance with the guidelines determined in terms of section 51 (4) of the National Act.
- (3) Should the parties fail to reach agreement as envisaged in subsection (2) as to an amount, they may approach any competent court having jurisdiction to decide the matter.

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***Ad hoc* authorisations**

- 65.** (1) No one may undertake public transport services in connection with a particular occurrence, such as a sports event, funeral or wedding, except under the authority of an *ad hoc* authorisation issued and completed under this section.

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- (2) Subsection (1) does not apply where –

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- (a) a charter service will be operated in terms of an appropriate operating license or permit; or

- (b) the operator will provide the service in terms of an operating license or permit which already authorises the relevant transport on the route or in the area in question.

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- (3) A holder may apply to the Board for the issue, on payment of the prescribed fee, of a series of *ad hoc* authorisations.

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- (4) The Board must sequentially number *ad hoc* authorisations issued by it and keep a register of the authorisations with the name of the holder to whom they have been issued.

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- (5) Before commencing services referred to in subsection (1), the holder concerned must complete an *ad hoc* authorisation for the trip in question in the manner prescribed and must keep the authorisation in the relevant motor vehicle at all times when the service is undertaken and produce it on demand to an authorised officer.

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- (6) As soon as possible, but not later than 72 hours after completion of the services in question, the holder must submit a completed copy of the *ad hoc* authorisation to the Board and in the case of a minibus taxi-type service, as well as to the association to which he or she belongs if the holder is a member of an association, and the relevant registered association operating on the route or network in question. 5
- (7) The Board may disqualify a holder who habitually undertakes temporary transport services without completing the necessary authorisation, or who habitually abuses *ad hoc* authorisations. 10
- (8) *Ad hoc* authorisations must be in the prescribed form.
- (9) *Ad hoc* authorisations may only be used to transport passengers for once-off events and, while they are being used – 15
 - (a) passengers may not be picked up or dropped off en route;
 - (b) the holder must return from the *ad hoc* journey with the same passengers; 20
 - (c) the holder may not undertake minibus taxi-type services locally while waiting for passengers.

Special circumstances operating licenses 25

- 66.
- (1) Where the MEC has acted under section 101 to close, routes, the MEC may instruct the Board to invite applications by advertisement in the *Provincial Gazette* and two local newspapers circulated in that area for special circumstance operating licenses to operate services on those routes. 30
 - (2) Applications under subsection (1) must be made in the prescribed manner and on payment of the prescribed fee.
 - (3) The Board must consider an application made under subsection (1) and may in its discretion grant the application in full or in part, in either case subject to such conditions as the Board may impose, or refuse the application. 35
 - (4) Special circumstances operating licenses must be issued for a fixed period not exceeding 21 days and should the period expire it may not be renewable and applications must be invited again as envisaged in subsection (1). 40
 - (5) The Board may delegate its powers under this section to a member or official of the Board.

Increase of certain tariffs prior to applications for amendment of relevant permits or operating license

67. Whenever a permit or operating license authorising conveyance for reward stipulates that the holder must comply with a condition that the conveyance must be undertaken at tariffs approved or laid down by the Board, that holder may at any time after an increase in the price of petroleum fuel in the Republic, increase the tariffs by the same percentage, but by not more than 10%, if within 10 days after the coming into effect of a tariff so increased, the holder applies to the Board for an appropriate amendment of the relevant permit or operating license under this Act. 5 10

PART 9

FREE STATE TRANSPORT REGISTRAR AND REGISTRATION OF ASSOCIATIONS AND OPERATORS 15

Appointment of Free State Transport Registrar and panel

68. (1) The Provincial Registrar appointed under section 15 of the Free State Interim Passenger Transport Act, 1998 (Act No. 16 of 1998) is deemed to be the Registrar referred to in section 53(1) of the National Act. 20
- (2) The MEC must appoint a panel to advise and assist the Registrar with the Registrar's functions, who must be persons who have shown ability in the public transport industry, or who, in the opinion of the MEC, have equivalent background or experience, to perform the functions assigned to the panel under this Act. 25
- (3) The assessors appointed before the commencement of this Act in terms of section 20 of the Free State Interim Passenger Transport Act, 1998, will continue in office as assessors until their period of appointment expires, unless the MEC terminates their appointment earlier. 30
- (4) (a) Before appointing the Registrar or an assessor, the MEC must publish a notice of intention to do so, and invite applications for membership, in the *Provincial Gazette* and at least one newspaper circulating in the Province, in English and at least one other official language widely spoken in the Province. 35
- (b) Before appointing the Registrar or any assessor, the MEC must publish, in the same manner, the names of the persons he or she proposes to appoint and invite comments and representations in that regard. 40
- (c) The MEC must give due consideration to any comments and representations received. 45

- (5) No one may be appointed as Registrar or assessor if he or she –
- (a) is a minor;
 - (b) has been declared mentally incapable of handling his or her own affairs by a competent court; 5
 - (c) is an unrehabilitated insolvent; or
 - (d) has been convicted of an offence involving dishonesty or has been removed from public office due to misconduct. 10
- (6) When the appointment of any person as Registrar or assessor is considered, that person must disclose to the MEC, in writing, any interests which he or she may have in any part of the public transport industry, and failure to do so will constitute an offence. 15
- (7) The Registrar and assessor must be appointed for a period not exceeding three years and, subject to the provisions of this Act, hold office on conditions as to remuneration and otherwise as the MEC may determine when they are appointed. 20
- (8) When the office of Registrar is vacant or the Registrar is unable to act due to any temporary physical or mental disability, the MEC must appoint any fit and proper person who is not subject to any disqualification mentioned in subsection 5, to act as Registrar to exercise or perform the powers, functions and duties of that office until the vacancy is filled or the incumbent of that office has resumed duty, as the case may be. 25
- (9) A person whose period of office as Registrar or assessor has expired is eligible for re-appointment. 30
- (10) The MEC must, subject to the laws governing the Public Service, provide the staff necessary to assist the Registrar in the performance of his or her functions. 35

Resignation, vacation of and removal from office of Registrar and assessors

69. (1) The Registrar or an assessor may resign on two month's written notice to the MEC. 40
- (2) The MEC may remove from office the Registrar or an assessor –
- (a) who has failed to comply with a condition of his or her appointment; 45

- (b) who has been guilty of improper conduct or has regularly neglected his or her duties or failed to discharge those duties fairly and impartially;
 - (c) who is unable to perform efficiently his or her duties; 5
 - (d) who, in the case of an assessor, has failed to attend three consecutive meetings of the assessors without good reason.
- (3) The Registrar or an assessor must vacate his or her office if he or she – 10
 - (a) becomes subject to any of the disqualifications for appointment mentioned in section 68 (5) of this Act;
 - (b) is removed from office under subsection (2). 15

Duties of the Registrar

- 70.** The Registrar must – 20
- (a) receive consider and decide upon applications for registration of associations, members and non-members in terms of this Act and grant registration to those who qualify; 20
 - (b) establish and keep up to date a register of registered associations, their members, and non-members in the prescribed manner; 25
 - (c) adhere to the prescribed forms of the register and certificates to be kept, maintained or issued under this Act; 30
 - (d) monitor compliance by registered associations and their members with the provisions of prescribed minimum standard constitutions, or in the case of a non-member, with the prescribed code of conduct; 30
 - (e) supply the MEC on request with information regarding the Registrar's functions; 35
 - (f) provide advice and assistance to applicants for registration;
 - (g) for every calendar year submit to the MEC an annual report on progress made in carrying out the Registrar's functions; 40
 - (h) on written request and on payment of the prescribed fee, provide anyone with statistical information from the register, unless such information, potentially, is commercially sensitive and may harm the business or commercial interests or viability of any particular person, organisation or entity, or may lead, directly or indirectly, to the identification of that person, organisation or entity; 45

- (i) consider and decide on the suspension or cancellation of the registration of an association or any member thereof or of any non-member.

Powers of the Registrar

- 71. (1) In dealing with any matter referred to in section 70 of this Act, the Registrar may –
 - (a) allow a person affected by or interested in the matter, or the duly authorised representative of such a person, to appear before the Registrar and –
 - (i) give evidence or make oral representation relevant to the matter; 10
 - (ii) call witnesses and lead evidence on any question concerning a matter relevant to the proceedings before the Registrar; 15
 - (iii) question a person who testifies as a witness in those proceedings; 20
 - (b) issue a subpoena in the prescribed form requiring a person to appear before the Registrar to give evidence or to produce any book, plan, document or other record, or any article, item or object, in the possession or under the control of the person, and have it served in the manner so prescribed; 25
 - (c) order any person present at the place where the proceedings are conducted, to appear before the Registrar to give evidence or to produce any book, plan, document or other record, or any article, item or object, which is in the physical possession of the person at that place; 30
 - (d) question any person appearing as a witness; 35
 - (e) require that any oral evidence be given under oath or affirmation and, for that purpose, administer an oath to or take down an affirmation from any witness;
 - (f) refuse to hear any oral evidence or representations from any person unless the person has been sworn in or has made an affirmation as a witness. 40
- (2) The Registrar may administer an oath or affirmation to the person appearing before the Registrar as a witness. 45
- (3) The Registrar must provide interested parties on request with written reasons for a decision he or she has taken.

Meetings and decisions of the Registrar and assessors

72. (1) Meetings of the Registrar and assessors must be held according to the prescribed procedures and at the prescribed times and places. 5
- (2) All reasonable efforts must be made that decisions at meetings of the Registrar and the panel are taken by consensus, however if no consensus could be reached, the Registrar has the deciding vote.
- (3) The panel may, with the approval of the Registrar, co-opt to that panel one or two persons who are not disqualified in terms of section 68 (5), for the purpose of assisting that panel with any matter before it which falls within such a person's particular field of expertise or specialisation. 10
- (4) Such a co-opted person may address the panel and participate in the panel's discussion of the matter, but may not take part in any voting thereon. 15
- (5) No decision taken or given and no other act performed by the panel or their co-opt is invalid merely by reason – 20
- (a) of a vacancy in that panel; or
- (b) of the fact that any person not entitled to sit as an assessor sat as an assessor or participated in the proceedings of that panel when the decision was taken, if that decision was taken or that act was authorised by the required majority of the assessors who were entitled to sit. 25

Application for registration

73. (1) An association, member or a non-member who wants to be registered must lodge with the Registrar, in the manner and on the form prescribed, an application for registration accompanied by the prescribed application fee, if any, and the information required by this Act and by the Registrar. 30
- (2) If after considering the application and verifying the information submitted, the Registrar is satisfied that the applicant has complied with the prescribed requirements, the Registrar must register the applicant. 35
- (3) If after considering the application the Registrar is not satisfied that the applicant has complied with the prescribed requirements, the registrar must inform the applicant of the requirements that have not been met, and may provide the applicant with advice and assistance to enable the applicant to meet the requirements. 40
- 45

Issuing of certificate and distinguishing marks upon registration

74. (1) Where an association, member or non-member is registered, the Registrar must enter the prescribed particulars thereof in the provincial transport register and must issue to the association, member or non-member a registration number, and a registration certificate in the prescribed form. 5
- (2) The Registrar must in addition issue, in the manner and form prescribed, a distinguishing mark for each vehicle of the registered member or non-member that is used under the authority of an appropriate permit or operating license. 10

Associations, members and non-members undertaking interprovincial transport

75. (1) Upon registration of an association, a member or a non-member that undertakes interprovincial transport, the Registrar must forward a copy of the certificate of registration and all registered details to the registrar or Department responsible for transport affairs in each province to or from which the members of the association, or the non-member, operate. 15
- (2) Where the Registrar is notified by the Registrar of another province that an association, member or non-member has been registered in that other province, the Registrar must note the fact in his or her records, as well as the particulars thereof as supplied by the other registrar. 20
- 25

Reservation of privileges for registered associations and operators

76. (1) Assistance by the Department to associations and operators may be provided only to those that have been registered under this Act. 30
- (2) No operator or representative of an association may have representation on a taxi associations or similar representative body established by this Act, unless registered in terms thereof. 35

PART 10

REGISTRATION OF MINIBUS TAXI ASSOCIATIONS AND OPERATORS

Compulsory registration of association, members and non-members in respect of minibus taxi-type services

77. (1) After the date determined by the MEC by notice in the *Provincial Gazette*, no operator may undertake minibus taxi-type services, and no association may conduct business as such, without being registered under this Act. 40

- (2) Unless otherwise indicated in this Act, sections 78 to 84 are applicable to registration of non-members and members of associations in relation to minibus taxi-type services.

Associations and operators registered under the Free State Interim Passenger Transport Act 5

- 78.** (1) An association which has been fully registered in terms of section 18 of the Free State Interim Passenger Transport Act, 1998 (Act No. 16 of 1998), will be deemed to have been registered under this Act. 10
- (2) A person who has been fully registered as a member of a registered association, or as non-member, in terms of section 18 of the Free State Interim Passenger Transport Act, 1998 (Act No. 16 of 1998) will be deemed to have been registered as such under this Act. 15

Elections and referenda

- 79.** (1) The MEC may instruct an association by written notice to hold elections for the executive committee of the association or referenda on issues causing conflict or tension within the association or between the association and another association or associations, within a time stated in the notice, and direct in the notice that the elections or referenda be independently monitored by – 20
- (a) a person or persons appointed and paid for by the MEC; or 25
- (b) a person or persons appointed and paid for by the association at its costs. 30
- (2) The Registrar must suspend or cancel the registration of an association that fails to comply with an instruction issued under subsection (1). 35

Registration of associations

- 80.** The Registrar must register an association which upon application satisfies the Registrar – 35
- (a) that it has been in existence for a period not less than the minimum prescribed period; 40
- (b) that the number of members meets the prescribed minimum;
- (c) that the Registered Constitution and code of conduct submitted by the association has been signed and accepted by each of its members; 45
- (d) that the said Constitution and code of conduct are consistent with and comply with the prescribed requirements;

- (e) that the association enjoys the support of relevant municipalities and transport authorities;
- (f) that each member of the association holds a valid permit or operating license for each motor vehicle that he or she operates and that his or her operations are within the authority thereof; 5
- (g) that each member of the association has furnished proof to the satisfaction of the Registrar that the member is registered as a tax payer under the Income Tax Act, or, in terms of that Act, is not required so to register; and 10
- (h) that all of the information required by the Registrar in terms of this Act or other legislation has been provided and this information has been verified in the manner prescribed. 15

Registration of members of registered associations

81. Where an association has been registered, the Registrar must register every member thereof in respect of whom the required information has been provided in the relevant application form and who holds a valid and appropriated permit or operating license, as a member of that association. 20

New members of registered associations

82. (1) Where a registered association has admitted a new member to membership who holds an appropriate permit or operating license for the route or routes in question, it must within 14 days of such admission, notify the Registrar in writing and supply to the Registrar the prescribed particulars in respect of such new member, whereupon the Registrar must register that person as a member of that association. 25 30
- (2) Where an association has provisionally admitted an operator to membership who does not hold an appropriate permit to operating license for the route or routes in question, it must within 14 days of such admission, notify the Board in writing of such admission and supply to the Board the prescribed particulars. 35
- (3) An operator referred to in subsection (2) must apply for the appropriate operating license within 14 days of being admitted to such provisional membership, and submit proof of such application to the Registrar. 40
- (4) The fact that an operator who has been provisionally admitted as referred to in subsection (3), does not entitle the operator to operate a public transport service.

- (5) Should the Board issue an appropriate operating license to such a provisionally admitted member, the Board must notify the Registrar within 14 days and supply to the Registrar a copy of the operating license as well as the particulars relating to the member supplied to the Board by the relevant association. 5
- (6) On receipt of such copy and particulars, the Registrar must register the person as a member of the association.
- (7) Should such a provisionally admitted operator fail to apply for the necessary operating license within the time required by subsection (3), or should the Board notify the operator that such application has been unsuccessful, the association must terminate the admission of that operator within seven days after expiry of the period mentioned in subsection (3), or after such notification, as the case may be. 10
15

Registration of non-members

83. (1) A non-member qualifies for registration and, upon having applied therefore, must be registered, where the non-member – 20
- (a) has subscribed to the prescribed code of conduct;
 - (b) holds an appropriate operating license or permit for each vehicle by means of which the non-member operates a public transport service; 25
 - (c) operates the public transport service to which such a permit or operating license relates, in compliance with the terms of, and conditions attached to, the permit or operating license; 30
 - (d) has furnished proof to the satisfaction of the Registrar that the non-member is registered as a taxpayer under the Income Tax Act, or, in terms of that Act, is not required so to register; and 35
 - (e) has applied for registration as a non-member due to the following causes:
 - (i) there is no registered association with regard to the route or routes or, if applicable, in the area where the applicant's public transport service is operated; or 40
 - (ii) where there is such a registered association, but –
 - (aa) the applicant has been refused membership of the association; 45
 - (bb) the association's requirements for admission to membership are unfair;

- (cc) in view of the prevailing circumstances, the applicant reasonably cannot be expected to become a member of the association;
 - (dd) there is a reasonable suspicion that the applicant, if admitted to membership of the association, will be subjected to unfair discrimination; or
 - (ee) Applicant chooses not to belong to any association.
- (2) Where a non-member wants to apply for an operating license, the non-member must first apply to the Registrar in the prescribed manner and on the prescribed form for registration as a non-member. 10
- (3) The Registrar must establish whether an applicant applying under subsection (2) complies with the requirements of subsection (1), and if so issued to the applicant a certificate to this effect for submission to the Board. 15
- (4) Should the Board grant and issue an appropriate operating license to such a non-member, the Board must notify the Registrar within 14 (fourteen) days and supply to the Registrar a copy of the operating license. 20
- (5) On receipt of such particulars, the Registrar must register the non-member. 25

Disciplinary measures

- 84.
- (1) The Registrar may suspend or withdraw the registration of an association or operator for failure to comply with this Act or with the rules set out in the minimum standard constitution or code of conduct for non-members, as the case may be, or for other conduct that has been prescribed as improper conduct. 30
 - (2) On receipt of a complaint, accusation or allegation or on the ground of information which has come to his or her notice, the Registrar may conduct an inquiry in the manner prescribed. 35
 - (3) Before conducting an inquiry, the Registrar must address a written warning to the association or operator requiring him, her or it to remedy the failure within the time stated in the warning, which may not be less than 21 days. 40
 - (4) If the inquiry reveals that there was such a failure or conduct, the Registrar may –
 - (a) impose a fine not exceeding the amount prescribed in the regulations; 45

- (b) send a written order signed by him or her of temporary suspension of the certificate of registration; or
 - (c) send a written order signed by him or her withdrawing the certificate of registration. 5
- (5) Immediately after issuing an order that the name of an association or non-member be struck off the register, the Registrar must forward a certified copy thereof to the Board and to the Department or institution providing benefits or assistance to that association or its members to that operator. 10

PART 11

REGISTRATION OF METERED TAXI ASSOCIATIONS AND OPERATORS

15

Registration of metered taxi associations, members and non-members

85. Sections 77, 81, 82 and 84 of this Act apply, with the necessary changes, to the registration of metered taxi associations, members and non-members, reading in those sections “metered taxi services” for the expression “minibus taxi-type services”. 20

Registration of metered taxi associations

86. The Registrar must grant registration to a metered taxi association which upon application satisfies the Registrar – 25
- (a) that it has been in existence for a period not less than the minimum prescribed period; 30
 - (b) that the Constitution and code of conduct submitted by the association has been signed and accepted by each of its members;
 - (c) that the said Constitution and code of conduct are consistent with and comply with the prescribed requirements; 35
 - (d) that the association enjoys the support of relevant municipalities and transport authorities;
 - (e) that each member of the association holds a valid operating license or permit for each motor vehicle that he or she operates and that his or her operation are within the authority thereof; 40
 - (f) that each member of the association is in possession of a valid radio frequency license; 45

- (g) that each member of the association has furnished proof to the satisfaction of the Registrar that the member is registered as a tax payer or not required to register as a taxpayer; and
- (h) that all of the information required by the Registrar in terms of this Act or otherwise has been provided and this information has been verified in the prescribed manner. 5

Registration of non-members operating metered taxi services

- 10
87. (1) A non-member operating or wishing to operate metered taxi services qualifies for registration and, upon having applied therefore, must be registered, where the non-member –
- (a) has subscribed to the prescribed code of conduct; 15
 - (b) holds an appropriate permit or operating license for each vehicle by means of which the non-member operates a metered taxi service;
 - (c) operates the metered taxi service to which such a permit or operating license relates, in compliance with the terms of, and conditions attached to the operating license; 20
 - (d) is in possession of a valid radio frequency license; 25
 - (e) has furnished proof to the satisfaction of the Registrar that the non-member is registered as a tax payer or not required to register as a taxpayer under the Income Tax Act; and
 - (f) has supplied all of the information required by the Registrar in terms of this Act or otherwise and this information has been verified in the prescribed manner. 30
- (2) Where a non-member wishes to apply for a permit or operating license, the non-member must first apply to the Registrar in the prescribed manner and form for registration as a non-member. 35
- (3) The Registrar must establish whether an applicant applying under subsection (2) complies with the requirements of subsection (1), and if so issue to the applicant a certificate to this effect for submission to the Board. 40
- (4) Should the Board grant and issue an appropriate permit or operating license to such non-member, the Board must notify the Registrar within 14 days and supply to the Registrar a copy of the permit or operating license.

- (5) On receipt of such particulars, the Registrar must register the non-member.

PART 12

REGISTRATION OF BUS-TYPE AND COACH-TYPE ASSOCIATIONS AND OPERATORS 5

Registration of associations, members and non-members operating bus-type and coach-type services

88. Sections 77, 81, 82 and 84 must apply to the registration of associations operating bus-type services and coach-type services, their members, and non-members operating such services, substituting in those sections bus-type services” or “coach-type services”, as the case may be, in the place of the “minibus taxi-type services”. 10

Registration of associations of operators of bus-type and coach-type services 15

89. The Registrar must grant registration to an association of operators of bus-type and coach-type services, which on application satisfies the Registrar that – 20
- (a) it has been in existence for a period not less than the minimum prescribed period; 25
 - (b) the number of members of the association meets the prescribed minimum; 30
 - (c) the Constitution and code of conduct submitted by the association has been signed and accepted by each of its members; 35
 - (d) the said Constitution and code of conduct are consistent with and comply with the prescribed requirements; 40
 - (e) each member of the association holds a valid operating license or permit for each motor vehicle that he or she operates and that his or her operations are within the authority thereof; 45
 - (f) each member of the association has furnished proof to the satisfaction of the Registrar that the member is registered as a tax payer or not required to register as a taxpayer under Income Tax Act; and
 - (g) all of the information required by the Registrar in terms of this Act or otherwise has been provided and this information has been verified in the manner prescribed. 40

Registration of non-members operating bus-type and coach-type services 45

90. (1) A non-member operating or wishing to operate bus-type or coach-type services qualifies for registration and, on submission of an application must be registered, where the non-member –

- (a) has subscribed to the prescribed code of conduct;
 - (b) holds an appropriate permit or operating license for each vehicle by means of which the non-member operates the bus-type or coach-type service; 5
 - (c) operates the services to which such a permit or operating license, relates, in compliance with the terms of, and conditions attached to, the permit or operating license; and 10
 - (d) has furnished proof to the satisfaction of the Registrar that the non-member is registered as a taxpayer or not required to register as a taxpayer under the Income Tax Act.
- (2) Where a non-member wishes to apply for an operating license the non-member must first apply to the Registrar in the prescribed manner and form for registration as a non-member. 15
- (3) Should the Board grant and issue an appropriate operating license to such non-member, the Board must notify the Registrar within 14 days and supply to the Registrar a copy of the operating license. 20
- (4) On receipt of such particulars, the Registrar must register the non-member.

PART 13

25

REGISTRATION OF FOUR PLUS ONE TAXI-TYPE ASSOCIATIONS AND OPERATORS

Registration of associations, members and non-members operating four plus one taxi-type services 30

91. Sections 77, 81, 82 and 84 must apply to the registration of associations operating bus-type services and coach-type services, their members, and non-members operating such services, reading in those sections four plus one taxi-type services”, as the case may be, for the expression “minibus taxi-type services”. 35

Registration of associations of operators of four plus one taxi type services

92. The Registrar shall grant registration to an association of operators of bus-type and coach-type services which on application satisfies the Registrar that – 40
- (a) it has been in existence for a period not less than the minimum prescribed period; 45
 - (b) the number of members meets the prescribed minimum;
 - (c) the Constitution and code of conduct submitted by the association has been signed and accepted by each of its members;

- (d) the said Constitution and code of conduct are consistent with and comply with the prescribed requirements;
- (e) each member of the association holds a valid operating license or permit for each motor vehicle that he or she operates and that his or her operations are within the authority thereof; 5
- (f) each member of the association has furnished proof to the satisfaction of the Registrar that the member is registered as a tax payer or not required to register as a taxpayer under Income Tax Act; and 10
- (g) all of the information required by the Registrar in terms of this Act or otherwise has been provided and this information has been verified in the manner prescribed. 15

Registration of non-members operating four plus one taxi-type services

93. (1) A non-member operating or wishing to operate four plus one taxi-type services qualifies for registration and, on submission of an application must be registered, where the non-member – 20
- (a) has subscribed to the prescribed code of conduct;
 - (b) holds an appropriate permit or operating license for each vehicle by means of which the non-member operates four plus one taxi-type service; 25
 - (c) operates the services to which such a permit or operating license, relates, in compliance with the terms of, and conditions attached to, the permit or operating license; and 30
 - (d) has furnished proof to the satisfaction of the Registrar that the non-member is registered as a taxpayer or not required to register as a taxpayer under the Income Tax Act. 35
- (2) Where a non-member wishes to apply for an operating license the non-member must first apply to the Registrar in the prescribed manner and form for registration as a non-member.
- (3) Should the Board grant and issue an appropriate operating license to such non-member, the Board must notify the Registrar within 14 days and supply to the Registrar a copy of the operating license. 40
- (4) On receipt of such particulars, the Registrar must register the non-member.

PART 14

REGISTRATION OF ASSOCIATIONS AND OPERATORS PROVIDING TRANSPORT FOR EDUCATION SERVICES

5

Registration of associations, members and non-members providing transport for education services

94. Sections 77, 81, 82 and 84 must apply to the registration of associations providing transport for education services, their members, and non-members operating such services, substituting those sections “education services”, as the case may be, in the place of the expression “minibus taxi-type services”. 10

Registration of associations of operators providing transport for education services

15

95. The Registrar must grant registration to an association of operators providing transport for educational services which on application satisfies the Registrar that –
- (a) it has been in existence for a period not less than the minimum prescribed period; 20
 - (b) the number of members meets the prescribed minimum;
 - (c) the Constitution and code of conduct submitted by the association has been signed and accepted by each of its members; 25
 - (d) the Constitution and code of conduct are consistent with and comply with the prescribed requirements;
 - (e) each member of the association holds a valid operating license or permit for each motor vehicle that he or she operates and that his or her operations are within the authority thereof; 30
 - (f) each member of the association has furnished proof to the satisfaction of the Registrar that the member is registered as a tax payer or not required to register as a taxpayer under Income Tax Act; and 35
 - (g) all of the information required by the Registrar in terms of this Act or otherwise has been provided and this information has been verified in the manner prescribed. 40

Registration of non-members providing transport for education services

96. (1) A non-member operating or wishing to operate four plus one taxi-type services qualifies for registration and, on submission of an application must be registered, where the non-member – 45
- (a) has subscribed to the prescribed code of conduct;

- (b) holds an appropriate permit or operating license for each vehicle by means of which the non-member operates transport for education services;
 - (c) operates the services to which such a permit or operating license, relates, in compliance with the terms of, and conditions attached to, the permit or operating license; and 5
 - (d) has furnished proof to the satisfaction of the Registrar that the non-member is registered as a taxpayer or not required to register as a taxpayer under the Income Tax Act. 10
- (2) Where a non-member wishes to apply for an operating license the non-member must first apply to the Registrar in the prescribed manner and form for registration as a non-member. 15
- (3) Should the Board grant and issue an appropriate operating license to such non-member, the Board must notify the Registrar within 14 (fourteen) days and supply to the Registrar a copy of the operating license. 20
- (4) On receipt of such particulars, the Registrar must register the non-member. 20

PART 15

LAW ENFORCEMENT

25

Public transport law enforcement

97. (1) In addition to the measures provided in this Act with regard to law enforcement, the MEC and planning authorities must take active steps to develop systems to improve land transport law enforcement in their respective jurisdictions. 30
- (2) Despite the provisions of any other law – 35
- (a) the MEC and
 - (b) planning authorities
- referred to in this section as an enforcement authority, may enter into an agreement in terms of which – 40
- (i) public transport law enforcement functions are undertaken by one enforcement authority in the area of jurisdiction of another; 45
 - (ii) authorised officers of one such authority may be seconded to another authority temporarily;

- (iii) public transport law enforcement functions are undertaken jointly, or by a public or private sector agency on behalf of the authority,

on terms and conditions set out in the agreement, including conditions as to which authority must bear the costs involved.

5

Appointment of inspectors

98. (1) The MEC may designate employees in the Department, or of transport authorities, who are fit and proper persons, as inspectors for the purposes of matters which in terms of this Act, fall under the jurisdiction of the Province or the transport authority, as the case may be. 10
- (a) The Head of the Department must issue to every inspector so appointed a certificate of appointment and official proof of identity in the prescribed form. 15
- (b) The functions of inspectors so appointed are to monitor compliance with this Act in the province or transport area concerned and to assist with the investigation and prevention of offences contemplated in section 102 which have been committed within the province, subject to provincial laws and the directions of the MEC and the Head of Department. 20
- (2) In performing those functions, an inspector will have all the powers conferred on an authorised officer by or in terms of this Act or any other applicable legislation. 25
- (3) When performing any function or duty or exercising any power in terms of this Act, an inspector must on demand by any person in relation to whom the power, function or duty is exercised or performed, produce the certificate of appointment. 30

Impoundment of vehicles

99. (1) An authorised officer who is satisfied on reasonable grounds that a motor vehicle is being used by any person for the operation of public transport without the necessary operating licence or permit or contrary to the conditions imposed with regard thereto, may impound the vehicle pending the investigation and prosecution of that person for an offence mentioned in section 102(1)(a) or (b). 35 40
- (2) A vehicle impounded under subsection (1) must be delivered to the head of the depot contemplated in subsection (4), who must retain the vehicle in the depot and release it to the person concerned only – 45

- (a) when the criminal charges against the person have been withdrawn or the person has been acquitted of the offence charged; or
 - (b) in the case where the person is convicted of the offence charged, and unless the court has ordered otherwise, on payment to the head of the depot of the amount determined by the MEC. 5
- (3) Upon the second or subsequent impoundment of a vehicle which had been previously impounded, subsection (2) applies, with the changes required by the context, except that impoundment fee will be increased in accordance with the scale so determined. 10
- (4)
 - (a) The MEC or a municipality in consultation with the MEC, by notice in the *Provincial Gazette*, may designate any place defined in the notice to be a depot for the purposes of this section, and may in the same manner amend or withdraw such a notice at any time. 15
 - (b) The MEC or, where applicable, the relevant municipality, must appoint an inspector or an authorised officer in the service of the municipality as the person in charge of the depot. 20

Presumption and proof of certain facts

100. (1) A document which purports to be an operating licence issued under this Act, or a permit issued under a previous law or a copy of such an operating licence or permit certified to be a true copy, is on mere production in any prosecutions for an offence mentioned in section 102(1), where the possession or contents of such an operating licence or permit may be relevant, admissible in evidence as proof that it is such an operating licence or permit which had been lawfully issued, or that it is a true copy thereof, as the case may be, and of the truth and accuracy of the particulars thereof. 25 30
- (2) A document which states that the motor vehicle described therein is registered, under the relevant law, in the name of a person specified therein as the owner, and which purports to have been issued under such a law by an employee of the registering authority for motor vehicles of the place where the vehicle was so registered, is on mere production in a prosecution under this Act, admissible as sufficient proof of that person's registered ownership of the vehicle and of the truth and accuracy of the particulars contained therein. 35 40

Special emergency measures

101. (1) The MEC may by notice in the *Provincial Gazette*, declare an area, as an area in which the special measures provided for in this section will apply, where he or she is of the opinion that this is necessary to normalize the situation in the area characterized by violence, unrest or instability. 5
- (2) The MEC may make regulations providing that one or more routes or ranks as specified, or that all of the routes and ranks, without specification, are closed to the operation of public transport services in an area declared under subsection (1) for a period stated in the notice, and that no person may undertake specified services on the affected route or routes or in the affected rank or ranks during the period. 10
- (3) The regulations contemplated in subsection (2), may provide that the contravention thereof will constitute an offence and prescribe penalties in respect thereof. 15
- (4) Before making regulations under subsection (2), the MEC must publish a notice in the *Provincial Gazette* and at least one newspaper circulating in the declared area, stating: 20
- (a) a brief description of the nature and purpose of the intended action;
 - (b) the route or routes and rank or ranks that will be closed; 25
 - (c) the period for which the proposed regulations will be in force;
 - (d) that interested or affected persons may request reasons for the proposed regulations; 30
 - (e) that any interested or affected persons may make representations;
 - (f) the time within which representations may be made, which may not be less than 24 hours; 35
 - (g) the address to which representations must be submitted; and
 - (h) the manner in which representations may be made. 40
- (5) The MEC must consider any representations received under subsection (4) before making regulations under subsection (2).

Offences

102. (1) A person is guilty of an offence –

- | | | |
|-----|---|----|
| (a) | if the person operates a public transport service in contravention of section 4 (3) or sections 77, 85, 88, 91 or 94 of this Act; | 5 |
| (b) | if the person operates or undertakes a public transport service contrary to the terms and conditions of an operating license or permit; | 10 |
| (c) | if the person contravenes any other provision of this Act; | |
| (d) | if, being the holder of an operating license or permit or the agent or employee of such a holder, the person allows someone else to use that operating license or permit for a vehicle other than the vehicle specified in the operating license or permit; | 15 |
| (e) | if the person applies for or obtains an operating license knowing that a current operating license has already been issued for the same vehicle; | 20 |
| (f) | if the person, with the intent to deceive, forges, alters, defaces, damages or adds to any operating license, permit to other official document issued under this Act; | 25 |
| (g) | if, knowing that a document is not an operating license or permit, or such other official document or that it has been altered, defaced, damaged or added to, utters or uses the document; | 30 |
| (h) | if the person furnishes or gives false information with regard to any application made to the Board or the Registrar or in the course of appearing in any proceedings, investigation or inquiry before the Board or Registrar; | 35 |
| (i) | if the person impersonates an authorised officer; | |
| (j) | if the person wilfully obstructs or hinders an authorised officer who is discharging the duties attached to the office concerned; | 40 |
| (k) | if the person refuses or fails to comply with the lawful order of an authorised officer; | |
| (l) | if the person fails to return a permit, operating license, registration certificate or a distinguishing mark to the Registrar or the Board as the case may be, if required to do so by this Act; | 45 |

- (m) if the person, without good reason –
 - (i) refuses or fails to appear before the Board or Registrar in compliance with an order or subpoena issued under this Act; 5
 - (ii) refuses or fails to answer to the best of the person's knowledge and ability, any question lawfully put to the person by any member of the Board or by the Registrar, as the case may be; or 10
 - (iii) refuses or fails to produce any book, document, plan, record or article in compliance with such an order or subpoena; 10
- (n) if, where the person is conveyed as a passenger on a vehicle in the course of the operation of a public transport service, the person – 15
 - (i) fails to pay the fare due for the journey when payment is requested by the driver or conductor of the vehicle concerned; 20
 - (ii) smokes or drinks liquor on that vehicle in contravention of a notice on the vehicle which forbids smoking and/or drinking; 20
 - (iii) wilfully acts in a manner that inconveniences a fellow passenger; 25
 - (iv) disobeys a reasonable instruction issued by the driver or conductor of that vehicle for the purposes of maintaining order or ending a disturbance or controlling any emergency arising or existing on that vehicle; or 30
 - (v) wilfully performs any act in or on that vehicle that could cause injury or endanger the life of any person or cause damage to any property; 35
- (o) if the person operates an adapted vehicle in contravention of section 20 of this Act;
- (p) if the person, being the holder of an operating license or permit relates, fails to comply with any duty or obligation imposed on such a holder or driver by or in terms of this Act. 40
- (2) Whenever a manager, agent or employee of the holder of an operating license or permit performs or omits to perform any act which, if the holder of an operating license or permit had performed or omitted to perform that act personally, would have constituted an offence in terms of subsection (1), that holder will be guilty of that offence if – 45

- (a) the holder –
 - (i) connived at or knowingly permitted the act or omission concerned; or 5
 - (ii) did not take all reasonable measures to prevent that act or omission; and
- (b) an act or omission of the nature of the act or omission charged, whether legal or illegal, fell within the scope of the authority or the course of the employment of the manager, agent or employee. 10

Penalties

103. A person convicted of an offence under this Act is liable on conviction to imprisonment for a period not exceeding one year or to a fine for an amount not exceeding R 100 000 or to both such fine and imprisonment. 15

Demerit system

104. (1) Subject to this section, the MEC may by regulation provide for a points demerit system with regard to persons who contravene this Act, in respect of offences not referred to in the Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998), and whereby provision is made – 20
- (a) for recording a specified number of demerit points against the name of the offender for each occasion on which the offender is convicted for such contraventions; 30
 - (b) for imposing a specified penalty or sanction mentioned in subsection (2)(b) on offenders whose demerit points equal or exceed a specified number.
- (2) (a) Without limiting the MEC's powers under subsection (1) with regard to the recording of demerit points against offenders, provision may be made that the number of demerit points that may be recorded per occasion may be increased in accordance with a specified sliding scale or formula – 35
- (i) for second and subsequent cases of contravention; 40
 - (ii) according to the seriousness of the offence, so that the more serious the offence, the higher the number of demerit points recorded. 45

- (b) Imprisonment or a fine may be imposed on offenders in appropriate circumstances, or as an alternative –
 - (i) a reprimand and a warning issued in writing; 5
 - (ii) suspension of an operating license or permit held by the offender. The suspension will be for a period prescribed and specified in the written notice of suspension to the offender; 10
 - (iii) withdrawal of the operating license or permit; or
 - (iv) a prescribed sanction that is lesser than that provided for in subparagraph (ii) or (iii). 15
- (3) The MEC must give notice to the proposed introduction of the points demerit system, and in the notice –
 - (a) broadly outline the proposed system; and 20
 - (b) invite interested persons to comment on the proposed system and, in particular, the penalties and other sanctions proposed, and invite them to furnish written comments and representations not later than 30 days after the date of the notice. 25
- (4) The provision of a points demerit system shall be published in the prescribed manner, and will take effect and become enforceable and binding 30 days after publication.
- (5) A penalty or other sanction may not be imposed in terms of subsection (2)(b) unless the rules of natural justice have been applied with regard to the offender. 30

Powers of authorised officer

- 105. (1) The authorised official is empowered in terms of the Act and in the manner prescribed by the MEC to monitor compliance with the provisions of the Act by any motor vehicle used for public transport as to determine whether such motor vehicle and any documentation comply with the Act, road safety rules and regulations, as well as with the Occupational Health and Safety Act. 35 40
- (2) The authorised official may require the driver to furnish his personal details, relevant documentation, the owner's details or documentary proof in relation to the business in connection with which the motor vehicle is used. 45

- (3) The personal details or relevant document of the person in charge of the motor vehicle may also be produced for inspection in relation to the business with which the vehicle is used.
- (4) Where an authorised official finds that the said vehicle used for public transport under the authority of a permit or operating licence is defective or impose danger to persons or property, the authorised official may order the driver or any person in charge of such motor vehicle to surrender that permit or operating licence and prohibit such driver or person forthwith to use the vehicle for purpose of public transport. 5 10
- (5) The authorised official may retain the permission, permit or licence until the holder satisfies the official that the defects have been remedied and that the motor vehicle is in a roadworthy condition to conduct public transport services. 15
- (6) The onus of proving that the motor vehicle is in a roadworthy condition vests in the holder of the permit or operating licence.
- (7) The authorised official may, if satisfied that the defects have been remedied and that the said motor vehicle is in roadworthy condition to conduct public transport services, issue or re-issue the permit or permission of such motor vehicle to conduct public transport. 20

PART 14

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PROVINCIAL APPEAL TRIBUNAL

Establishment of Provincial Appeal Tribunal

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- 106.** (1) The Provincial Appeal Tribunal established in terms of the Free State Interim Passenger Transport Act, 1998 (Act No. 6 of 1998) is deemed to be the Provincial Appeal Tribunal referred to in this Act.
- (2) The Tribunal must consist of three members, appointed by the MEC in consultation with the Executive Council of the Province, of whom one member has at least 10 years' experience in practice as an advocated or attorney, and the other members shall possess wide experience of or have shown ability in public transport or commercial or financial matters or the conduct of public affairs. 35 40
- (3) The MEC must appoint one of the members to be chairperson of the Tribunal.
- (4) Section 42(2) to (10) of this Act must, with the changes required by the context, apply in respect of the Tribunal. 45

Meetings of Tribunal

- 107.** (1) The first meeting of the Tribunal must be held on such a date and at such a time and place as the Chairperson may determine, and all meeting thereafter must be held on such dates and at such times and places as the Chairperson may determine in consultation with the Tribunal. 5
- (2) If the Chairperson is absent from a meeting of the Tribunal, the members present must elect one from their number to preside at that meeting. 10
- (3) The procedure at a meeting of the Tribunal must, subject to this section, be determined by the Chairperson in consultation with the Tribunal, and any decision in this regard must be taken after due consideration of the principles of openness and transparency. 15
- (4) The quorum of a meeting of the Tribunal must be the majority of the members of the Tribunal. 15
- (5) A decision of the Tribunal must be taken by a majority of the votes of the members present at a meeting of the Tribunal, and in the event of an equality of votes on any matter, the Chairperson must have a casting vote in addition to his or her deliberative vote. 20

Appeal to Tribunal

- 108.** (1) Save as otherwise provided in this Act and subject to subsection (2), a person who – 25
- (a) has in terms of this Act or the Road Transportation Act, 1977, applied to the Board for the granting, renewal, amendment or transfer of an operating licence or a permit or whose operating licence or permit has been withdrawn, varied or suspended by the Board; 30
- (b) is the holder of an operating licence or a permit issued by the Board; 35
- (c) in the manner and within the time prescribed, submitted representations to the Board objecting to or supporting an application, 40
- and is affected by an act, direction or decision of the Board, may in the manner and within the time prescribed, after the said act was performed or the said direction or decision was given by the Board, appeal against the act, direction or decision to the Tribunal. 45

- (2) Where the Board notifies a person of an act, direction or decision contemplated in subsection (1) by means of a written document, the date of that document must be deemed to be the date on which that act was performed or that direction or decision was given. 5
- (3) The Tribunal must receive and, subject to the provisions of this section and the regulations, consider an appeal lodged with it in terms of subsection (1) and may in its discretion –
- (a) reject the appeal and confirm the act, direction or decision appealed against; or 10
- (b) uphold the appeal, set aside the act, direction or decision appealed against, and – 15
- (i) substitute the Board's decision with any other act, direction or decision which the Board could have performed or given; or
- (ii) remit the matter which gave rise to the appeal to the Board for consideration afresh; or 20
- (c) uphold the appeal partially and vary the act, direction or decision appealed against. 25
- (4) The Chairperson of the Tribunal or a member thereof nominated by the Chairperson may, in his or her discretion and without giving prior notice to or hearing any interested party –
- (a) grant an application for condonation of the late filing of a notice of appeal, provided the appeal is lodged in the manner prescribed within 42 days after the Board performed the act or gave the direction or decision appealed against, or refuse it; 30
- (b) grant or refuse an application to suspend the operation of an act, direction or decision of the Board appealed against; 35
- (c) set aside an act, direction or decision of the Board appealed against and remit the matter to the Board for consideration afresh. 40
- (5) An act, direction or decision of the Tribunal under subsection (3)(b)(i) or (c) must, except for the purposes of subsection (1), be deemed to be an act, direction or decision of the Board. 40
- (6) In so far as appeals relating to interprovincial transport services are concerned, this section must apply only where the services are conducted entirely with the Province. 45

Staff of Tribunal

- 109.** The MEC must, subject to the laws governing the Public Service, provide the staff necessary to assist the Tribunal in the performance of its functions.

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PART 15

GENERAL PROVISIONS

Compulsory insurance for operators

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- 110.** (1) The MEC may make regulations providing that holders of permits or operating licenses for specified types of public transport services must provide for public liability insurance for passengers or other types of insurance stipulated in the regulations, in the amounts that the MEC may specify in the regulations. The regulations may also specify qualifications or requirements for insurers providing such insurance. 15
- (2) (a) The Board may impose conditions on operating licenses regarding requirements for insurance referred to in subsection (1) that are not inconsistent with such regulation. 20
- (b) The regulations may also provide that proof of such insurance must be submitted to the Board or other persons specified in the regulations, within the times so specified. 25
- (3) The insurance mentioned in subsection (1) must, among other things, provide cover in respect of loss or damage suffered through damage to property or death of or injury to any person resulting from an intentional or negligent act or omission by the operator or agents or servants of the operator in connection with the provision of public transport services. 30
- (4) The MEC must make regulations under subsection (1) in respect of tourist services within 180 days of the commencement of this Act. 35

Measures to support public transport

- 111.** (1) The MEC may make regulations setting aside dedicated lanes on roads under the jurisdiction of the Province for the exclusive use of vehicles used for public transport services, notwithstanding the provisions of the National Road Traffic Act. 40

- (2) The MEC may provide financial assistance to transport authorities or municipalities for –
 - (a) instituting park and ride schemes and planning, constructing and maintaining the necessary infrastructure for such schemes; 5
 - (b) setting aside dedicated lanes on roads under their jurisdiction for the exclusive use of vehicles used for public transport services; 10
 - (c) planning, constructing and maintaining infrastructure for enhancing the efficiency and convenience of public transport services.

Transitional provisions

- 112. (1) At the commencement of this Act, all rights and obligations of the Free State Permit Board and the Provincial Appeal Tribunal, established under the Free State Interim Passenger Transport Act, 1998, read with the Road Transportation Act, 1977 (Act No. 74 of 1977), vest in the Board contemplated in section 42 and the Provincial Appeal Tribunal contemplated in section 106. 15
- (2) Subject to this Act, any appointment, designation, regulation, notice, authorisation, permission, approval, decision, exemption, direction, order, suspension, determination or condition issued, given, granted, made or imposed under any provision of the Road Transportation Act, 1977 and the Free State Interim Passenger Transport Act, 1998, or similar law, will be regarded and treated as having been issued, given, granted, made or imposed under the correspondence provisions of this Act by the person or functionary competent in terms of this Act to do so. 25
- (3) Any application in relation to a permit in terms of the Road Transportation Act, 1977 or the Free State Interim Passenger Transport Act, 1998, which was not disposed of at the commencement of this Act, is deemed to be an application under this Act. 30
- (4) Any reference to “board” or “local road transportation board”, “inspector” or “authorised official” as envisaged in the Road Transportation Act, 1977 and the Free State Interim Passenger Transport Act, 1998 must be construed as a reference to the Board or the authorised official, respectively. 35
- (5) Any application for registration as an association in terms of the Free State Interim Passenger Transport Act, 1998, which was not disposed of at the commencement of this Act, is deemed to be an application under this Act. 40
- (6) This Act binds the State. 45

Repeal of legislation

113. The following legislation is repealed:

- (a) The Free State Interim Passenger Transport Act, 1998 (Act No. 16 of 1998). 5
- (b) The Road Transportation Act, 1977 (Act No. 74 of 1977).

Short title and commencement date

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- 114.** (1) This Act is called Free State Public Transport Act, 2005 and comes into operation on a date to be determined by the Premier by Proclamation in the *Provincial Gazette*.
- (2) Different dates may be so fixed in respect of different provisions of this Act. 15