

**THE ADVENT OF TRANSPORT AUTHORITIES
IN SOUTH AFRICA**

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1. BACKGROUND

Institutional structures, called transport authorities, first emerged in Hamburg some 30 years ago. There are currently hundreds of examples worldwide of successful transport authorities at a local level and, among these, there has been a move away from passenger transport authorities (PTAs) to multi-modal transport authorities (TAs).

As a result of the promulgation of the Urban Transport Act in 1977⁽¹⁾, there was a move towards more transport-focussed councillors, committees and officials at a local level. This move towards Metropolitan Transport Areas (MTAs) and their associated Core Cities, in terms of the Urban Transport Act, was the first small step towards transport authorities in South Africa.

Since the mid-1980's there have been several initiatives in South Africa motivating the concept of transport authorities, due to the critical need for improved local transport service delivery. More formal work, however, with respect to transport authorities started in the 1990's with the Committee of Urban Transport Authorities (CUTA) Planning Sub-committee document entitled "*Guidelines for the Establishment and Management of a Regional Passenger Transport Authority*" in 1991⁽²⁾.

A Co-ordination Committee on Passenger Transport of the Regional Services Councils within the Pretoria-Witwatersrand-Vereeniging Region prepared a document entitled "*Strategic Framework for the Transfer of the Passenger Transport Function to Regional Services Councils within the PWV Region*" in May 1992⁽³⁾. The Central Witwatersrand Regional Services Council and its successors, the Central Witwatersrand Metropolitan Chamber, the Greater Johannesburg Transitional Metropolitan Council and the Greater Johannesburg Metropolitan Council continued work with respect to a transport authority right through to the present day.

In September 1996, National Government published its White Paper on National Transport Policy⁽⁴⁾ and, in terms of Land Passenger Transport, its strategic objective for planning and regulation was "*to provide appropriate institutional structures, which facilitate the effective and efficient planning, implementation, funding, regulation and law enforcement of the passenger transport system devolved, to the lowest competent level*". This was the first

concrete commitment from Government to transport authority-type institutional structures at a local level for improved transport service delivery.

2. DEVELOPMENT OF TRANSPORT AUTHORITY POLICY & LEGISLATION IN SOUTH AFRICA

The early investigations in South Africa used the terminology of a passenger transport authority (PTA) but more recently, the South African debate has also moved towards a transport authority (TA), so as to incorporate all modes of transport and not only passenger transport.

The generally understood meaning of a transport authority in South Africa is a municipal council/committee or similar legal entity, with its sole purpose being to deal with municipal transport functions. A transport executive (TE), on the other hand, is understood to be the reservoir of technical and professional expertise, and human resources required for the transport authority to undertake its functions.

Six main principles have underpinned the development of the transport authority concept in South Africa and these are as follows:

- 1) TAs should ideally cover functional areas so that “seamless” transportation can take place;
- 2) TAs should be perceived as being objectives and fair;
- 3) TAs should be capable of being sued, i.e. a legal persona;
- 4) TAs should not have vested interests, e.g. operators;
- 5) TAs should be politically accountable; and
- 6) TAs should have the capacity and ability to take on their functions.

The development of legislation in South Africa with respect to transport authorities began with the Gazetting of the Working Documents for Land Transport in December 1996,⁽⁵⁾ followed by several versions of the National Land Transport Bill in 1997 and 1998. The 13th March 1998⁽⁶⁾ version of the National Land Transport Transition Bill has been used as a benchmark document and the most recent Gazetted version, called the National Land Transport Transition Bill, was on the 19th January 1999⁽⁷⁾. This latter version was subsequently withdrawn from the last session of the old Parliament, following an agreement at MINCOM that it should be amended and taken to the new Parliament late in 1999 or early in 2000.

In parallel with the National initiatives, Gauteng Province prepared and enacted the Gauteng Transport Framework Act, 1998 (No. 8 of 1998) on the 6th November 1998⁽⁸⁾ but this has not yet been brought into operation.

3. CURRENT LEGISLATIVE FRAMEWORK

The current supporting legislation underpinning transport authorities in South Africa comprises some six pieces of legislation, namely:

- ◆ The Final Constitution (Act No 108 of 1996);
- ◆ Development Facilitation Act (No. 67 of 1995);
- ◆ Local Government Transition Second Amendment Act (No. 97 of 1996);
- ◆ Local Government : Municipal Demarcation Act (No. 27 of 1998);
- ◆ Local Government : Municipal Structures Act (No. 117 of 1998); and
- ◆ Draft Municipal Systems Bill (4 May 1999 version).

In addition to the Urban Transport Act mentioned earlier, the following transport legislation has specific relevance for the transport authority concept and the land transport field in which they are intended to operate, namely:

- ◆ National Land Transport Interim Arrangements Act (No. 45 of 1998);
- ◆ Road Transportation Act (No. 74 of 1997);
- ◆ Legal Succession to South African Transport Services Act (No. 41 of 1998);
- ◆ Transport Appeal Tribunal Act (No. 39 of 1998);

- ◆ Cross-Border Road Transport Act (No. 4 of 1998); and
- ◆ National Land Transport Transition Bill (27th July 1999 version).

The supporting legislation is particularly important as it attempts to clarify the roles, functions and responsibilities of the three spheres of Government as they relate to land transport. The Trilogy of Local Government legislation, however, has more direct relevance as, in the Municipal Demarcation Act, provision is made for the Minister to declare metropolitan municipalities, while the Municipal Structures Act provides for different categories of municipalities. The Draft Municipal Systems Bill, on the other hand, provides for the concept of municipal service districts, which are effectively functional areas where specific services are delivered, for example transport services, and this dovetails with the concept of transport authorities.

As far as transport-specific legislation is concerned, the current intention is that the Urban Transport Act would continue to operate in the interim and that Metropolitan Transport Areas and their Core Cities would have a choice to continue under this Act, or to move towards the concept of transport authorities, under the National Land Transport Transition Act.

4. SPECIFIC ISSUES RELATING TO TRANSPORT AUTHORITIES AND THEIR EXECUTIVES

4.1 Establishment of Transport Authorities

In terms of the 27th July 1999 version of the National Land Transport Transition Bill, transport authorities may be established for transport areas that comprise individual municipalities, a combination of municipalities or parts of the aforementioned. These transport authorities may be initiated from scratch, or they may come into existence via the conversion of existing Metropolitan Transport Areas and Core Cities that were formed in terms of the Urban Transport Act. This means, in practice, that Category A and C, and also B municipalities within C municipalities, can become transport authorities.

The individual municipalities, or combinations of municipalities, wanting to become transport authorities, would need to enter into an agreement with the relevant MEC, called a *Founding Agreement*. This *Founding Agreement* would be in writing and include:

- ◆ the basic agreement between the parties;
- ◆ the establishment and structure of the governing body;
- ◆ operational and procedural arrangements; and
- ◆ a boundary description.

Provision is also made for transport areas and transport authorities to extend across provincial boundaries and, in this case, the two (or more) relevant MECs must enter into an agreement to provide for how such a transport authority would operate.

4.2 Boundaries of Transport Areas

The factors for determining the boundaries of transport areas are specified as being:

- ◆ dominant passenger movements;
- ◆ economic inter-dependency between inhabitants;
- ◆ integrated land use and transport development potential;
- ◆ the extent of public transport services; and
- ◆ demographic or geographic factors.

In addition to the above, the Minister may prescribe further factors as well as procedures to be adopted to determine transport areas in terms of functionality.

4.3 Functions and Competencies of Transport Authorities

Functions and competencies of transport authorities have long been the subject of much debate at all three spheres of government in South Africa and they have been split into compulsory and optional functions.

The compulsory functions are:

- ◆ the preparation of transport plans;
- ◆ the development of land transport policy;
- ◆ financial planning for land transport;
- ◆ the management of the movement of persons and goods;

- ◆ the promotion and facilitation of public involvement; and
- ◆ calling for tenders for public transport services (within one year after establishment).

The financial affairs of transport authorities are governed in the same way as that in the Local Government Transition Act, except that they will operate as a separate legal entity with a bank account. They would also be empowered to use money for land transport received from National, Provincial and Local Government.

Provision is also made for the province to take over the functions of a transport authority, if it does not exercise its compulsory functions satisfactorily.

4.4 Transport Executives

Provision has been made in the Provincial part of the Bill for the performance of professional, technical, administrative and other work of a transport authority by a transport executive.

Options include:

- ◆ the municipal administration or administrations of a participating municipality or municipalities;
- ◆ a specified department or departments; and
- ◆ a separate body under the auspices and control of the transport authority, called a transport executive.

If there is more than one transport authority, a single transport executive could provide that function or it could be provided by a Provincial department.

4.5 General

Issues of a general nature are that the governance of transport authorities must be by duly elected councillors of the constituent municipalities. In addition, transport authorities cannot be subject to liquidation and special provisions are made for the disillusion of transport authorities in terms of ongoing assets and liabilities, as well as contractual obligations.

5. A COMPARISON BETWEEN TRANSPORT AUTHORITIES AND CORE CITIES

As the NLTTB enables the parallel operation of transport authorities and the existing concept of Core Cities, in terms of the Urban Transport Act, a comparison has been made in Table 1 indicating key considerations for local authorities in choosing one or other option.

From Table 1 it can be seen that the transport authority has the potential to become much more focussed, being able to concentrate exclusively on local land transport service delivery. It is also separate from the Local Authority and the Province and its range of functions are far broader than that of a Core City.

As far as funding is concerned, it is at least as well off as a Core City but with the new financial legislation in progress, it will be in a substantially better position than Core Cities.

TABLE 1: A COMPARISON BETWEEN TRANSPORT AUTHORITIES & CORE CITIES

Issue	Transport Authority	Core City
Legislation	NLTT Act (2000)	Urban Transport Act (No. 78 of 1977)
Area	Functional – agreed by municipalities and MEC	Urban functional – declared by MEC
Formulation	Separate legal entity	Council or designated Committee of Council
Governance	Councillors	Councillors
Procedures	In terms of the Founding Agreement	In terms of Local Authority procedures
Functions	Planning, Finances, Operations, Tendering, Public Involvement (plus a huge range of optional functions)	Planning and Infrastructure
Human Resources	CEO and Municipal Administration(s), Department(s), Transport Executive	Designated Local Authority Personnel
Links to other spheres of Government	By agreement – probably financial link to Local Authority	Technical Liaison Committee, MTAB and Urban Transport Board
Funding	Bank Account and also Funds from three spheres of Government	Consolidated Metropolitan Transport Fund (CMTF) as well as National and Provincial Urban Transport Funds

6. PILOT PROJECTS FOR TRANSPORT AUTHORITIES IN SOUTH AFRICA

During the past two years, four main pilot projects into transport authorities have taken place in South Africa in:

- 1) The Greater Pretoria Metropolitan Council (GPMC);
- 2) The Eastern Gauteng Services Council (EGSC);
- 3) The Durban Metropolitan Council; and
- 4) The Port Elizabeth Council.

6.1 Greater Pretoria Metropolitan Council (GPMC)

In 1998, the GPMC instituted an investigation into the form and function of a metropolitan transport authority and this investigation examined relevant national and provincial legislation, GPMC structures, the legal responsibilities of the possible TA, the implications of establishing a TA and TE in the GPMC area and, finally, the conceptual forms for the TA and TE.

The general conclusions were that the governing body for the TA should be one of the standing committees in the GPMC. It was concluded that the TE function should be performed by a separate, specialised entity, preferably a Section 21 Company, and that the transport area should include municipalities outside of the jurisdiction of the GPMC, in terms of its functional area.

An analysis of strengths and weaknesses, opportunities and threats, relative to a transport authority, were generated and it was concluded that it would be better to wait for the trilogy of Local Government legislation before pursuing a transport authority in the GPMC area.

6.2 Eastern Gauteng Services Council (EGSC)

During 1997 and 1998, the EGSC conducted an investigation into the possibility of establishing a TA for its area. Initial work concentrated on the existing legal framework as well as the future legal framework, which considered both the National Land Transport Transition Bill and the Gauteng Transport Framework Bill.

Several workshops were held and it was resolved that the EGSC should strive to form an embryo TA and that a Steering Committee should be formed to clarify certain aspects of the transport authority, i.e. the model, the definition of the transport area, the functions, funding, organisational structures and the Transport Executive.

This Steering Committee has just commenced operation and some preliminary functional area investigations have begun.

6.3 Durban

This demonstration project was approved in December 1998. Two reports have been compiled so far, namely Analysis of Constitutional and Legislative Aspects of Proposed MTA, and Investigation of Functions and Financial Implications.

The project has looked at the legislative provisions, the possible impact of certain policies, the range of possible functions and the financing implications of undertaking the various functions. Organisational structuring of the transport executive in terms of functional responsibilities has been addressed in the project.

The project was set up to include, in the technical working group, representatives from the legal and financial departments of the Durban Metropolitan Council, and representatives from Finance and Local Government in the Province. These were seen as important roleplayers in the light of the considerations of land use in future transport planning and financial needs to support a MTA. Key stakeholders also formed part of the consultation process in the project.

An interim report is to be submitted to the Durban Metropolitan Council in September 1999.

6.4 Port Elizabeth

The Port Elizabeth demonstration project began in 1997. This first phase was completed at the end of 1998. Intensive public participation took place at the local authority level and the buy-in from all the effected Local Authorities was accomplished. The area of an embryo Transport Authority was identified and the Steering Committee prepared a business plan for the NDoT for the next phase, which included the actual establishment of the TA and the appointment of a TE.

Due to the new Local Government Structures Act this process was, however, delayed awaiting the demarcation of the area.

7. RECOMMENDATIONS

The following tentative recommendations are made with respect to future transport authorities, namely:

- (i) the pilot projects should run to their logical conclusions, as they will inform the process of forming transport authorities in South Africa;
- (ii) a more extensive assessment of advantages and disadvantages of either staying as a Core City or moving to a transport authority should be prepared to guide existing declared metropolitan transport areas;
- (iii) a model *Founding Agreement* should be developed to guide the process; and
- (iv) candidate metropolitan transport areas should be identified within South Africa and incentives should be provided to them to form transport authorities.

8. REFERENCES

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