

REPUBLIC OF SOUTH AFRICA

NATIONAL RAIL BILL, 2021

*(As introduced in the National Assembly as a section 76 Bill; explanatory summary of Bill published in
Government Gazette No. of 2021.)
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

BILL

To provide for the establishment of the National Planning Authority that is responsible for the development, monitoring, management and implementation of the National Rail Master Plan; and for the development of the National Rail Master Plan to direct infrastructure investment and provide strategic rail planning to ensure safe, affordable and efficient movement of freight and passengers; and for related matters.

Preamble

RECOGNISING THAT

- rail as a transport mode has failed within the Republic to continuously adapt to its ever-changing environment;
- a national unified approach is required to reverse the deterioration of rail services in the Republic and in Southern Africa;

AND SINCE

- the effective provision of rail services is a matter that, to be dealt with effectively, requires uniformity across the nation in respect of policy and norms and standards;
- national legislation is necessary for the protection of the common market in respect of the mobility of goods and labour, the promotion of economic activities across provincial boundaries and the protection of the environment;
- the effective provision of rail services requires uniform norms and standards, standardised delivery mechanisms and a national unified rail plan for the efficient, economic and effective use of the limited resources available for rail services and for the promotion of equal access to government services;

THEREFORE, in order to

- prevent the proliferation of laws, policies and approaches to the execution thereof from materially prejudicing the beneficiaries or recipients of rail services as well as the economic interests of provinces or the Republic as a whole or from impeding the implementation of a national rail policy;
- assist in securing the well-being of the people of the Republic and to provide effective, transparent, accountable and coherent government in respect of rail transport for the Republic as a whole,

B E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows: —

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CHAPTER 1 DEFINITIONS, INTERPRETATION, APPLICATION AND EXEMPTION

1. Definitions

In this Act, unless the context indicates otherwise –

“**Authority**” means the National Rail Planning Authority established in terms of section 5(1);

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**data bank**” means the national rail data bank established by section 17(1);

“**Department**” means the Department of Transport in the national sphere of government;

“**Minister**” means the minister in the national sphere of government responsible for transport matters;

“**organ of state**” has the meaning set out in section 239 of the Constitution;

“**PRASA**” means the Passenger Rail Agency of South Africa established in terms of section 22 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989);

“**person**” includes a juristic person and an organ of state in any sphere of government;

“**prescribed**” means determined, stipulated, required, authorized, permitted or otherwise provided for in a regulation made, or notice given, by the Minister in terms of this Act;

“**rail**” means any railway, railway operation or any other land-based transportation system which operates on a track;

“**National Rail Master Plan**” means the plan contemplated in section 11;

“**railway**” means a guided system designed for the movement of rolling stock that has the capability of transporting passengers, freight or both on a track and includes the land, network, rolling stock, plant, machinery, goods and other immovable or movable property of every description or kind used or set aside for use in connection with or for the purpose of a railway operation;

“**railway operation**” means the activities performed by a network operator, train operator or station operator, or any combination of them, or any plan, research, development, construction, or manufacturing or importation of goods relating to a railway operation;

“**railway operator**” means a network operator, train operator or station operator or any combination thereof, but in the case of a person who is a concessionaire or who operates,

constructs, maintains or manages a railway on behalf of another person who owns the relevant assets, that concessionaire or that person who so operates, constructs, maintains or manages that railway is for purposes of this definition regarded as being the network operator;

“rail transport” means any movement of persons or goods by rail, and for purposes of the Rail Master Plan includes anything supporting, facilitating or using rail transport or associated with rail transport;

“regional rapid transit services” means a rail service that integrates conurbations by providing several services per hour with trains running at 160km/h or faster that stop only at major nodes;

“this Act” includes the regulations.

2. Application of Act

(1) This Act applies to—

- (a) any person conducting a rail operation or to the operation of any railway within, or partly within, the Republic, with a track gauge equal to or wider than 600 millimetres; and
- (b) any existing railway operation designed to transport passengers or freight, or both, by rail, as well as similar railway operations that may be declared by the Minister by notice in the *Gazette* to be a rail operation or a railway, or both, for the purposes of this Act.

(2) This Act does not apply to—

- (a) a rail operation or railway in a mine which is underground and to which the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), or the Mine Health and Safety Act, 1996 (Act No. 29 of 1996), applies;
- (b) a rail operation or railway operated at an amusement park;
- (c) an aerial, cable-operated transportation system;
- (d) a ship to shore crane or a rail-mounted gantry crane, or the track or other infrastructure utilised by such a crane, the installation or operation of which has been approved by the authority contemplated in sections 3 and 4 of the National Ports Act,

2005 (Act No. 12 of 2005), but such a crane or track may not be linked to a system or a track used by rolling stock; or

- (e) any rail operation or railway exempted in accordance with section 3, to the extent of that exemption.

3. Exemption from Act

- (1) Subject to the provisions of this section, a person may be exempted from compliance with a provision of this Act.
- (2) A person may apply for an exemption to the Minister on the prescribed form and in the prescribed manner, and such application must be accompanied by—
 - (a) a motivation for the application;
 - (b) supporting documents as may be prescribed; and
 - (c) such other relevant documents directed by the Minister.
- (3) The Minister may if necessary, request the applicant to—
 - (a) appoint an independent service provider to determine the impact of the proposed exemption, in accordance with directions issued by the Minister; and
 - (b) furnish additional information.
- (4) The Minister must provide the Authority with the application contemplated in subsection (2) in order for the Authority to make a recommendation to the Minister.
- (5) The Minister may, before considering the application contemplated in subsection (2), and after making a determination that the rights, duties or interests of the general public or persons are likely to be adversely affected by the exemption—
 - (a) publish the application by notice in the *Gazette* or by such other means as the Minister may determine; and
 - (b) require the applicant to respond to the comments received.
- (6) The Minister must, after consideration of the Authority recommendation on the application and any other documents submitted to him or her, make a decision on the application, by taking into account whether—
 - (a) the granting of the exemption is likely to impact negatively on the general provision of the rail operation services;

- (b) the granting of the exemption is likely to benefit one section of or participant in the railway industry to the detriment of the other; or
 - (c) granting the application for exemption would not defeat the purpose of the Act.
- (7) A decision by the Minister to approve the application for exemption must be in writing and published by notice in the *Gazette*, which notice must include—
 - (a) reference to the provision of the Act, regulation or notice from which exemption is granted;
 - (b) details of the person to whom the exemption applies;
 - (c) the date from which and the date up to when the exemption applies and conditions that apply to the exemption, if any;
 - (d) the reasons for granting the exemption;
 - (e) a declaration that the granting of an exemption does not create any special rights or legitimate interests which may apply to the category of persons so exempted; and
 - (f) a declaration that any exemption granted may be amended or withdrawn subject to the provisions of this section.
- (8) The exemption granted in terms of this section may not be—
 - (a) applied retrospectively; and
 - (b) extended upon expiry.
- (9) A person may at any time in writing request the Minister to review any exemption granted in terms of this section, whereupon the Minister must instruct the person to notify Authority the person so exempted as well as any other person specified by the Minister of that application to review an exemption, and to submit any comments received to the Minister.
- (10) The Minister may after consideration of any comments received as contemplated in subsection (9) conduct a review, with due recognition of the administrative rights of the person exempted, if he or she deems it in the public interest to do so.
- (11) The Minister may on good grounds amend, suspend or withdraw an exemption.

- (12) If the Minister amends, suspends or withdraws an exemption, his or her decision must be published by notice in the *Gazette*, which notice must include—
- (a) if the exemption is amended or suspended, details of the notice contemplated in subsection (7);
 - (b) if the exemption is amended, the nature and extent of the amendment;
 - (c) if the exemption is suspended, the period of such suspension which may be conditional;
 - (d) if the exemption is withdrawn, a repeal of the notice contemplated in subsection (7);
 - (e) the date from which the exemption is amended, suspended or withdrawn, as the case may be, which may not be within a period less than two months of the date of publication of this notice; and
 - (f) the reasons for amending, suspending or withdrawing the exemption.
- (13) The Minister must cause any notice published in the *Gazette* in terms of subsections (7) or (12) to be tabled in Parliament if Parliament is—
- (a) then in ordinary session, within 14 days after publication thereof; or
 - (b) not then in ordinary session, within 14 days after the commencement of its next ordinary session.

4. Responsibilities of provincial, local government and Rail Operators

- (1) Subject to the National Rail Master Plan, provincial government is responsible for –
- (a) any rail transport function, mode or operation contemplated in provincial legislation, or delegated or assigned to it by national government;
 - (b) formulating provincial rail transport policy and strategy;
 - (c) planning, co-ordinating and facilitating rail transport functions in the province;
 - (d) planning, developing, funding and managing regional rapid transit services;
 - (e) in collaboration with national government, the development and planning of a long-distance railway service;
 - (f) funding of the railway operation under its control and management; and
 - (g) establishing a coordinating body to facilitate the integration of all modes of public transport by metropolitan and local municipalities.

- (2) Subject to the National Rail Master Plan, local government is responsible for –
- (a) any rail transport function delegated or assigned to it by national or provincial government;
 - (b) developing and managing a local integrated transport plan;
 - (c) the provision and maintenance of rolling stock on their urban rail network, upon such rail transport function being delegated or assigned to it by national or provincial government; and
 - (d) funding of the railway operation under its control and management.
- (3) Subject to the National Rail Master Plan, the rail operators are responsible for the provision, operation and maintenance of their own rolling stock on the rail network.

CHAPTER 2

ESTABLISHMENT OF INSTITUTIONS

5. National Rail Planning Authority

- (1) The National Rail Planning Authority is hereby established.
- (2) The organisational form of the Authority must be in accordance with section 7A of the Public Service Act.

6. Objects of the Authority

The objects of the Authority are to—

- (a) develop, monitor, manage and implement the National Rail Master Plan;
- (b) co-operate, collaborate and consult with relevant organs of state, rail operators, consumers of railway services and other stakeholders to achieve the best implementation of the National Rail Master Plan;
- (c) timeously provide the Minister and Parliament with appropriate information and advice, to ensure the most appropriate policies and regulatory framework for the Republic;
- (d) co-operate and collaborate with international counterparts, particularly within the Southern African Development Community; and

- (e) perform its functions in a fair, equitable, transparent, efficient and cost-effective manner.

7. Functions of the Authority

- (1) The Authority must for purposes of achieving its objects in terms of section 6–
 - (a) support, promote and comply with national rail policies, this Act and other applicable laws;
 - (b) subject to powers of other spheres of government, considers and approve the implementation and construction of new railway projects;
 - (c) conduct research and consultations to produce the National Rail Master Plan;
 - (d) support the Department and the National Treasury in developing a comprehensive investment strategy as contemplated in section 14(2);
 - (e) develop a coherent rail transport investment decision-making framework;
 - (f) on an on-going basis, monitor the impact of developments in rail and other modes of transport on the National Rail Master Plan;
 - (g) define and determine strategic freight and passenger corridors for the Republic;
 - (h) advise the Minister on any action or condition within the rail environment which—
 - (i) poses a threat or obstacle to the development of rail to its rightful place as a transport mode;
 - (ii) the Minister refers to the Authority; and
 - (iii) the Authority considers necessary in the furtherance of its objects.
 - (i) implement any Ministerial direction to the extent authorised by law;
 - (j) provide education and training and conduct public awareness activities relating to the Rail Master Plan; and
 - (k) co-operate with its counterparts in the Southern African Development Community to promote the harmonisation and interconnectivity of the railway system of the Republic with the objectives and requirements of the Community.
- (2) The Authority may, for purposes of achieving its objects in terms of section 6–
 - (a) establish consultative mechanisms to serve as a platform for consultation, co-operation, collaboration and the exchange of information between the Authority and stakeholders;

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- (b)* formally recognise any railway industry association representing operators to collaborate with it in respect of any function that the Authority is authorised to perform;
 - (c)* conclude a co-operative agreement or arrangement with any relevant organ of state to give effect to the principles of cooperative government and inter-governmental relations contemplated in Chapter 3 of the Constitution;
 - (d)* collaborate with any other body or institution or establish and control facilities for the collection and dissemination of scientific and technical information, in connection with any matter falling within the objects of the Authority;
 - (e)* engage any person or organisation having expertise to advise the Authority in relation to its functions; and
 - (f)* anything else reasonably required to achieve its objects.
- (3) Notwithstanding the generality of the planning function of the Authority as provided for in this section, the Authority shall not be responsible for:
 - (a)* detailed operation planning, which is the core function of the rail operators; and
 - (b)* the planning of any aspect relating to rail rolling stock procurement, operation or its maintenance.
- (4) The Authority must where appropriate and practicable –
 - (a)* adopt a meaningful consultative approach in relation to stakeholders;
 - (b)* co-ordinate and collaborate with other planning institutions or projects to prevent the duplication or overlapping of planning; and
 - (c)* developed a multi-disciplinary approach to planning.
- (5) The Minister may —
 - (a)* give a written direction to the Authority to investigate any matter or circumstances with respect to the purposes of this Act or to the Rail Master Plan, whether or not those circumstances appear at the time of the direction to amount to a possible contravention of this Act or; or
 - (b)* consult with the Authority on any matter arising under this Act.
- (6) The Minister, by notice in the Gazette, may direct the Authority to request the Competition Commission established by section 19 of the Competition Act, 1998 (Act No. 89 of 1998), to–

- (a) consider whether particular entities, markets, facilities or services within the transport sector are failing to function competitively or are characterised by anti-competitive abuses; or
- (b) conduct a market enquiry to determine whether any factor or combination thereof within the rail transport sector prevents, distorts or restricts competition or leads to anti-competitive outcomes within that sector or within the general economy.

8. Reporting to Minister and Parliament

- (1) The Authority must annually and at the time or period determined by the Minister submit to the Minister a report on –
 - (a) its performance during the financial period under review; and
 - (b) any other matters that may be required by any other law.
- (2) The Minister must table the annual report submitted to him or her in terms of subsection (1) in Parliament within 14 days—
 - (a) of receipt thereof, if Parliament is then in ordinary session; or
 - (b) after the commencement of its next ordinary session, if Parliament is not then in session.
- (3) The Minister may prescribe standards for the form and content of the annual reports, but any such regulation must, at a minimum, require the Authority to include a report on—
 - (a) compliance with this Act by the rail transport sector; and
 - (b) detailed reports of significant compliance contraventions.

9. Rail Access Coordination Forum

- (1) The Rail Access Coordination Forum is hereby established.
- (2) The purpose of the Rail Access Coordination Forum is to represent all infrastructure providers and all train operators.
- (3) The Rail Access Coordination Forum must develop proposals on detailed access rules, technical standards, non-compliance penalties, as well as fees for emergency services and unplanned maintenance rendered by one member of the Rail Access Coordination Forum to another.

- (4) The Minister must by regulation determine –
- (a) the composition, the rules in respect of reaching agreement and the duties of the Rail Access Coordination Forum after the receipt of the proposals; and
 - (b) any other matter which is necessary or expedient for the proper functioning of the Access Coordination Forum.

10. State-Owned Rail Operators

Save for what is provided for in this Act, the Passenger Rail Agency of South Africa and Transnet SOC Ltd will continue to provide railway services as state owned railway operators.

**CHAPTER 3
NATIONAL RAIL MASTER PLAN**

11. National Rail Master Plan

- (1) The Minister is responsible and accountable for the National Rail Master Plan, subject to the provisions of section 4.
- (2) The Minister must for purposes of subsection (1) observe and respect the powers and competencies of the provincial and local spheres of government and consult those spheres of government when it is necessary or desirable to do so.
- (3) The objects of the National Rail Master Plan include–
- (a) rebalancing the historical underfunding of rail, including planning for all sources of funding for rail transport, whether public or private;
 - (b) providing for development of specific rail services that are not sustainable without government assistance;
 - (c) nurturing and supporting those rail transport services that are essential for the country's domestic and international trade; and
 - (d) facilitating and encouraging private sector participation in this mode of transport.
- (4) The National Rail Master Plan applies to all freight and passenger rail operations and binds all persons who direct, manage or undertake rail operations and to whom this Act applies.

- (5) For the avoidance of doubt, in the event of a conflict between legislation governing any person to whom this Act or the Rail Master Plan applies, the memorandum of incorporation or shareholder's compact applicable to such a person, on the one hand, and this Act or the Rail Master Plan, on the other, this Act or the Rail Master Plan prevails to the extent of such conflict.
- (6) A person who fails or refuses to comply with the Rail Master Plan is guilty of an offence.

12. Minimum elements of National Rail Master Plan

- (1) The minimum elements that must be contained in the National Rail Master Plan shall include:
- (a) identify network constraints and opportunities, as well as infrastructure improvements and expansions required to ensure safe, affordable and efficient movement of passengers and freight;
 - (b) plan and direct infrastructure investment initiatives over rolling short-, medium- and long-term horizons in accordance with a National Rail Investment Plan, taking into account the needs of the Republic, the South African Development Community, state owned companies and agencies, and private sector participants;
 - (c) ensure that, rail infrastructure initiatives are geared towards the implementation of an appropriate gauge on the rail network;
 - (d) determine the need for trans-border rail transport corridors;
 - (e) provide for measures to address issues of market concentration and anti-competitive behaviour;
 - (f) determine conditions favourable for the participation of private sector operators in the national and regional rail networks;
 - (g) record the regulatory environment applicable to new entrants to the rail transport, including permissions and approvals required;
 - (h) determine the mechanisms to promote and ensure access to networks, and where necessary, establish technical and service standards;
 - (i) develop a comprehensive rail investment strategy, including the exploration of funding options and models facilitating and promoting railway investment and the provision of guidance to public and private sector investment in rail for planning purposes;
 - (j) determine the impact of rail investment on skills development and job creation;

- (k) provide that the planning and implementation of the railway operations promotes and enforces skills development in the railway sector;
 - (l) forecast potential demand;
 - (m) make recommendations on the renewal, extension or expansion of rail networks, rail density, rail gauges, infrastructure, inter-modal facilities, rail technologies and rolling stock;
 - (n) recommend the sequencing of infrastructure projects, influenced by applicable evaluation criteria and considering limited resources;
 - (o) detail measures to minimise the negative impact on the environment in the planning and development of rail infrastructure;
 - (p) determine consultation mechanisms in respect of any aspect of the National Rail Master Plan; and
 - (q) develop legislative proposals for the implementation of the National Rail Master Plan.
- (2) The National Rail Master Plan must comply with all relevant legislation and take cognisance of any relevant national policies and plans.

13. Consultation on development of the National Rail Master Plan

The Minister must timeously consult with the relevant Ministers, responsible Member of any relevant provincial Executive Council, any local government that has established a municipal transport authority, rail operators and any other relevant stakeholders to –

- (a) co-ordinate the development, implementation and monitoring of the Rail Master Plan; and
- (b) if necessary, to facilitate the settlement of any dispute between the Authority, and one or more provincial authorities or municipal transport authorities, , rail operators and any other relevant stakeholders rail operators and any other relevant stakeholders.

14. Development, adoption and implementation of National Rail Master Plan

- (1) The Authority as contemplated in section 5 must develop, implement, manage and monitor the National Rail Master Plan.
- (2) The Department in consultation with the National Treasury must develop a comprehensive investment strategy in accordance with the National Rail Master Plan to guide both public and private sector investment in rail.
- (3) The National Rail Master Plan or any amendment thereof becomes binding if –
 - (a) Cabinet has approved the National Rail Master Plan, or any amendment thereof; and
 - (b) the Minister has by notice in the Gazette published the approved text of the National Rail Master Plan, or any amendment thereof.
- (4) The Department in conjunction with any other relevant government departments and organs of state must ensure that the National Rail Master Plan is complied with in their respective jurisdictions.
- (5) The Minister may by regulation determine –
 - (a) guidelines and establish mechanisms to facilitate the implementation of the National Rail Master Plan;
 - (b) requirements for the drafting process of the National Rail Master Plan, and any subsequent amendments;
 - (c) requirements for the consultation process on the National Rail Master Plan, and any subsequent amendments; and
 - (d) requirements for any other matter which will facilitate or expedite the finalisation of the development of the National Rail Master Plan, or any subsequent amendment thereof.

15. Interpretation of National Rail Master Plan

- (1) The Minister may publish guidelines on the interpretation of the National Rail Master Plan.
- (2) The Authority's interpretation of the National Rail Master Plan or any provision thereof is binding unless a court of law orders otherwise.

16. Monitoring compliance

- (1) The Authority must monitor compliance with this Act and the National Rail Master Plan.
- (2) If the Authority is of the opinion that a person is not complying with this Act or the National Rail Master Plan, the Authority must –
 - (a) inform the Minister of the facts supporting that opinion;
 - (b) give notice to that person providing details in respect of the aspects or provisions of the National Rail Master Plan which are not being complied with; and
 - (c) take any further action it deems necessary to ensure compliance by that person.

CHAPTER 4

NATIONAL RAIL PLANNING INFORMATION MANAGEMENT SYSTEM

17. National rail transport data bank

- (1) A national rail transport data bank is hereby established.
- (2) The purpose of the data bank is to collect and analyse information necessary for producing, managing, planning for and implementing the National Rail Master Plan.
- (3) The Minister is responsible and accountable for the data bank.
- (4) The Department is responsible for the day-to-day management of the data bank, and the Department must provide appropriate safeguards to protect the data contained in the data bank.
- (5) The Minister may make regulations necessary or expedient for the implementation of this Chapter.

18. Duty to provide data

- (1) Every person who is bound by this Act must provide the data prescribed by the Minister, in the prescribed format and at the prescribed intervals, to the data bank.
- (2) Any person who fails to provide data as contemplated in subsection (1), is guilty of an offence.
- (3) A person, when submitting data to the data bank, may identify data that the person claims to be confidential, but any claim must be supported by a written statement in the prescribed form, giving a motivation to support the claim and explaining why the data is confidential.

19. Duty to give notice of planning or implementation

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- (1) If a person to whom this Act applies is planning or implementing anything provided for or contemplated in the National Rail Master Plan, that person must prior to commencing such planning or implementation in the prescribed form give notice to the Authority of the intention to do so, together with any relevant material.
- (2) The Authority may if it suspects that a person to whom this Act applies is planning or implementing anything provided for or contemplated in the National Rail Master Plan has failed to give notice as contemplated in subsection (1), it may request that person to do so immediately or to provide reasons why it has not done so.
- (3) The Authority may in respect of a notice contemplated in subsection (1) request the person who submitted the notice to provide additional information.
- (4) A person who fails to give notice, provide reasons or provide additional information as contemplated in subsections (1), (2) and (3), is guilty of an offence.
- (5) The Minister may make regulations in respect of time frames within which a person to whom this Act applies must comply with this section.

20. Access to data

- (1) Subject to subsection (2) and despite any other law to the contrary, other than the Constitution, a person in principle has access to non-confidential and non-personal data contained in the data bank.
- (2) A person does not have access to confidential data contained in the data bank, unless –
 - (a) that person is the Minister or the Authority;
 - (b) a court of law orders otherwise;
 - (c) the information is disclosed in documents filed in a court of law;
 - (d) the source of the information is not likely to be revealed or compromised by the release of that information; or
 - (e) the person who has provided the relevant data has given permission for its release.
- (3) The Department must in accordance with criteria prescribed by the Minister consider all data and claims submitted in accordance with subsections (1) and (3) of section 18 to determine whether it must be classified as confidential, but data already in the public domain cannot be classified as confidential.

- (4) The Minister must make regulations necessary or expedient for providing access to data, including any conditions which the Authority may impose on such access and any fees to be paid for providing access to data or reproductions of such data.
- (5) A person who discloses or disposes of data in contravention of this section is guilty of an offence.

Chapter 5

ECONOMIC, SAFETY AND SECURITY REGULATION

21 Economic Regulation

The Minister may establish a rail economic regulatory institution that amongst others must ensure:

- (a) fair access to rail infrastructure;
- (b) regulate tariffs and other charges leviable to access the rail network;
- (c) investigate and resolve complaints regarding access to the rail network; and

22 Safety Regulation

All the rail safety related matters arising from the implementation of this Act, shall be managed in accordance with the provisions of the Railway Safety Regulator Act as amended from time to time.

23 Security Regulation

Save as otherwise provided for in any other law, the responsibility for the security of goods and passengers conveyed on any part of the railway shall vest with the railway operators responsible for such conveyance.

CHAPTER 6
RAIL NETWORK

24 Branch Lines

- (1) The Minister may, after consideration of the Authority 's recommendation' designate parts of the railway network as either:
 - (a) Strategic Branch Lines; or
 - (b) Non-Strategic branch lines.
- (2) For the purpose of categorisation, the Minister must take into account amongst other the following:
 - (a) the importance of the Branch Line to the economic development of an area or rail corridor;
 - (b) the state of disrepair of the Branch Line; and
 - (c) ability of the Branch Line to utilise the modern rail technology.

25 Operation and Management of Branch Lines

- (1) In the event that an organ of state wishes to operate a strategic Branch Lines, such an organ of state shall be responsible to fund the costs and maintenance of such a Branch Line.
- (2) the Minister may also direct an organ of state to fund the rehabilitation of an inactive Branch Line for the purpose restoring minimum safe standards to such a Branch Line.
- (3) The safety aspects of rehabilitating an inactive Branch Line shall be in accordance with the requirements determined by Railway Safety Regulator.
- (4) The Economic Regulator shall upon request by a railway operator, have the power to allow a railway operator to cease any rail operations on a Branch Line that could not be restored to minimum safe standards.

CHAPTER 7
GENERAL PROVISIONS

26 Ministerial power to make regulations and issue notices

- (1) The Minister may subject to subsections (3) and (4) make regulations by notice or issue a notice in the *Gazette* as to any matter which may be necessary to prescribe for the effective administration of this Act.
- (2) Notwithstanding the generality of subsection (1) above, the Minister may make the following regulations:
- (a) exemption of persons from the application of this Act;
 - (b) provision and access to data as contemplated in Chapter 4;
 - (c) composition and functioning of the Access Coordination Forum as contemplated in section 9; and
 - (d) development of the Rail Master Plan.
- (3) The Minister may request the Authority to propose draft regulations for his or her consideration, and any stakeholder may submit representations to the Minister on such proposed regulations.
- (4) The Minister must, before making any regulations in terms of this Act or issuing a notice -
- (a) publish a notice in the *Gazette*—
 - (i) setting out the draft regulations or draft notice, as the case may be; and
 - (ii) inviting written comments to be submitted on the proposed regulations or notice, specifying an address to which, and a date before which, the comments may be submitted, which date may not be earlier than 30 days after publication of the notice;
 - (b) implement further steps, if any, which may in his or her opinion be appropriate to bring the contents of the proposed regulations or notice to the attention of interested persons;
 - (c) consider all comments received on or before the date specified in paragraph (a) (ii); and

- (d) on request by a committee of either house of Parliament, report on the extent to which a specific comment has been taken into account, or if a comment was not taken into account, provide the reason why it was not taken into account.
- (4) Any regulation or notice made in terms of or under this Act may provide that—
 - (a) the contravention thereof, or failure to comply therewith, is an offence; and
 - (b) a person convicted of that offence is punishable with a prescribed fine or a term of imprisonment not longer than the period so prescribed, but the prescribed fine may not at the time of publication of that notice exceed the amount prescribed in respect of one year of imprisonment determined in accordance with the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).
- (5) When making regulations or issuing a notice, the Minister must take into account –
 - (a) the impact of such regulations or notice on railway operations; and
 - (b) the financial burden created on operators in respect of compliance costs.

27 Tabling of regulations in Parliament

The Minister must, within 30 days after making any regulations in terms of this Act, table the regulations in the National Assembly and the National Council of Provinces, if Parliament is then in ordinary session, or after the commencement of its next ordinary session, if Parliament is not then in session.

28 Limitation of liability

- (1) The State Liability Act, 1957 (Act No. 20 of 1957), read with the changes required by the context, applies to the Authority, and a reference in that Act to "the Minister of the Department concerned" must be interpreted as referring to the Minister.
- (2) No Authority member, or employee or contractor of the Authority, is liable for any report, finding, point of view or recommendation that is given in good faith under this Act.
- (3) Neither the State nor any other person is liable for any damage or loss caused by—
 - (a) the exercise of any power or the performance of any duty in terms of this Act; or
 - (b) the failure to exercise any power, or perform any duty in terms of this Act, unless the exercise of, or the failure to exercise, the power, or the performance of, or failure to perform, the duty was unlawful, negligent or in bad faith.

29 Offences and Penalties

- (1) A person is guilty of an offence if he or she –
- (a) does anything calculated to improperly influence Authority concerning any matter connected with an investigation;
 - (b) anticipates any proposals, recommendations or findings of the Authority concerning an investigation in a way that is calculated to influence the proposals, recommendations or findings; and
 - (c) knowingly provides false information to the Authority or false data to the data bank.
- (2) A person found guilty of an offence is liable to pay a penalty as envisaged in subsection (3) .
- (3) A penalty imposed in terms of subsection (2) on a person found guilty of an offence in terms of subsection (1) may not exceed 10 per cent of the sum of the person’s annual turnover in the Republic and exports from the Republic during the preceding financial year of the person found guilty.

30 Magistrate's Court jurisdiction to impose penalties

Despite anything to the contrary contained in any other law, a Magistrate's Court has jurisdiction to impose any penalty provided for in this Act.

31 Serving documents

Unless otherwise provided in this Act, a notice, order or other document that, in terms of this Act, must be served on a person, will have been properly served when it has been either—

- (a) delivered to that person or if that person is a juristic person, to that person’s registered head office;
- (b) sent by electronic mail to the person’s known email address, and a system generated acknowledgement of receipt has been received; or
- (c) delivered by registered mail to that person’s last known address.

32 Act binds state and organs of state

For the avoidance of doubt, this Act binds the state and all organs of state.

33 Short title and commencement

- (1) This Act is called the National Rail Act, 2021, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.
- (2) Section **Error! Reference source not found.** of this Act will only come into effect on a date determined by Notice and subject to the fulfilment of section 3 of the Transitional arrangements.
- (3) The President may set different dates for different provisions of this Act to come into operation.

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Schedule 1
Transitional arrangements

1. The Minister must prescribe the time frames within which –
 - (a) proposals may be made for the research and drafting of the initial Rail Master Plan;
 - (b) consultation on the draft must be conducted; and
 - (c) the draft must be presented to Cabinet.

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