

REPUBLIC OF SOUTH AFRICA

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# INFRASTRUCTURE DEVELOPMENT BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
the Bill published in Government Gazette No. 36980 of 30 October 2013)  
(The English text is the official text of the Bill)*

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(MINISTER OF ECONOMIC DEVELOPMENT)

**[B 49—2013]**

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# BILL

To provide for the facilitation and co-ordination of public infrastructure development which is of significant economic or social importance to the Republic; to ensure that infrastructure development in the Republic is given priority in planning, approval and implementation; to ensure that the development goals of the State are promoted through infrastructure development; to improve the management of such infrastructure during all life-cycle phases, including planning, approval, implementation and operations; and to provide for matters incidental thereto.

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

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**Definitions**

- In this Act, unless the context indicates otherwise—
  - “**accounting officer or accounting authority**” has the meaning assigned to those expressions in the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);
  - “**applicant**” means a person responsible for submitting an application for an approval, authorisation, licence, permission or exemption relating to a strategic integrated project;
  - “**approval, authorisation, licence, permission or exemption**” means any approval, authorisation, licence, permission or exemption which in terms of any relevant law requires—
    - (a) the consideration of jurisdictional facts or of certain requirements or criteria and, in addition thereto, the exercise of a discretion whether or not to grant the approval, authorisation, licence, permission or exemption; or
    - (b) either the consideration of jurisdictional facts or of certain requirements or criteria or the exercise of a discretion whether or not to grant the approval, authorisation, licence, permission or exemption,
 and includes decisions in respect of environmental authorisations, zoning of land or any planning, use or development of land;
  - “**Commission**” means the Presidential Infrastructure Coordinating Commission referred to in section 3;
  - “**Department**” means the Economic Development Department;

- “**designate**”, in relation to a strategic integrated project, means the designation in terms of section 8 by the Commission by notice in the *Gazette* of a specific project as a strategic integrated project;
- “**infrastructure**” means installations, structures, facilities, systems, services or processes relating to the matters specified in Schedule 1 and which are part of the national infrastructure plan; 5
- “**Management Committee**” means the committee established by section 6;
- “**Minister**” means the Minister responsible for economic development;
- “**national infrastructure plan**” means a plan adopted by the Commission for the development of public infrastructure; 10
- “**person**” has the meaning assigned thereto in section 2 of the Interpretation Act, 1957 (Act No. 33 of 1957), and includes any organ of state and also any co-operative, non-governmental organisation, community based organisation or other organisation or association;
- “**prescribe**” means prescribe by regulation; 15
- “**regulation**” means any regulation made under this Act;
- “**Secretariat**” means the Secretariat established by section 9;
- “**SIP**” means a strategic integrated project;
- “**SIP chairperson**” means the Minister designated by the Commission as responsible for a SIP; 20
- “**SIP coordinator**” means a person or agency designated by the Commission to coordinate and facilitate the implementation of a strategic integrated project;
- “**steering committee**” means a multidisciplinary steering committee appointed in terms of section 12;
- “**strategic integrated project**” means a public infrastructure project or group of projects contemplated in section 7; and 25
- “**this Act**” includes any regulation.

## Objects of Act

2. The objects of this Act are to provide for—
- (a) the existence of the Presidential Infrastructure Coordinating Commission and its structures which must perform the functions provided for in this Act; 30
- (b) the identification and implementation of strategic integrated projects which are of significant economic or social importance to the Republic or a region in the Republic or which facilitate regional economic integration on the African continent; 35
- (c) the alignment and dedication of capabilities and resources for the effective implementation and utilisation of strategic integrated projects across the state in order to ensure coherence and the expeditious completion of infrastructure build and maintenance programmes;
- (d) the appointment of relevant Ministers to chair strategic integrated projects; 40
- (e) the establishment, appointment and functioning of steering committees to provide technical support and oversight for strategic integrated projects;
- (f) processes and periods of time applicable to the implementation of strategic integrated projects; and
- (g) generally, practices and procedures which seek to ensure that infrastructure development is not undertaken merely in a transactional manner, but in a manner which seeks to advance national development goals, including local industrialisation, skills development, job creation, youth employment, small business and cooperatives development, broad-based economic empowerment and regional economic integration. 45 50

## Part 2

### *Presidential Infrastructure Coordinating Commission and structures of Commission*

#### Structures and composition of Presidential Infrastructure Coordinating Commission 55

3. (1) The Presidential Infrastructure Coordinating Commission which exists when this Act takes effect continues so to exist.

- (2) The Commission has—
- (a) a Management Committee;
  - (b) a Secretariat; and
  - (c) Chairpersons, coordinators and steering committees of strategic integrated projects. 5
- (3) The Commission has the following members:
- (a) The President;
  - (b) the Deputy President;
  - (c) Ministers designated by the President;
  - (d) the Premiers of the Provinces; and 10
  - (e) the Executive Mayors of metropolitan councils as well as the chairperson of the South African Local Government Association recognised in terms of the Organised Local Government Act, 1997 (Act No. 52 of 1997), as the national organisation representing municipalities.
- (4) The President, or in his or her absence the Deputy President, is the chairperson of the Commission. 15
- (5) A decision by the majority of the members present at a meeting of the Commission is a decision of the Commission.
- (6) The Commission may determine its own procedures to be followed at its meetings.
- (7) The Commission may secure such services, assistance or advice from any person as it considers necessary to assist it to perform any of its functions. 20

#### **Functions of Commission**

4. The functions of the Commission are to—
- (a) coordinate the development, maintenance, implementation and monitoring of the national infrastructure plan; 25
  - (b) coordinate the determination of priorities for infrastructure development;
  - (c) designate strategic integrated projects contemplated in section 7 and designate SIP Chairpersons and SIP coordinators for them;
  - (d) ensure that infrastructure development in respect of any strategic integrated project is given priority in planning, approval and implementation; 30
  - (e) ensure co-operation between organs of state affected by projects undertaken;
  - (f) coordinate the identification of strategic international partners with which to conclude agreements which seek to promote the objects of this Act;
  - (g) identify—
    - (i) the current and future needs and related priorities in relation to infrastructure development of the Republic, or in the region as it relates to the Republic; 35
    - (ii) any legislation and other regulatory measures that impede or may impede infrastructure development, and advise the executive authority of the relevant sphere of government; 40
    - (iii) the direct and indirect impact of any strategic integrated project on job creation, youth employment and economic inclusiveness;
    - (iv) the direct and indirect impact of any strategic integrated project on economic equality and social cohesion;
    - (v) financial matters that may impact on infrastructure development; and 45
    - (vi) the social impact of strategic integrated projects;
  - (h) evaluate existing infrastructure with a view to improving planning, procurement, construction, operations and maintenance;
  - (i) consider proposals for infrastructure development and maintenance;
  - (j) promote investment and identify and develop strategies to cause the removal of impediments to investment; 50
  - (k) generally encourage and facilitate economic and industrial development connected with infrastructure or any strategic integrated project;
  - (l) promote the creation of decent employment opportunities and skills development, training and education, especially for historically disadvantaged persons and communities, women and persons with disabilities, in so far as it relates to infrastructure and any strategic integrated project; 55
  - (m) address in all phases of a strategic integrated project, including its planning, implementation, operation and maintenance phases, capacity constraints and improve coordination and integration within strategic integrated projects; and 60

- (n) develop and issue guidelines and frameworks to facilitate and align the implementation of strategic integrated projects.

### **Expropriation of land by Commission**

5. (1) The Commission may, for the purposes of implementing a strategic integrated project, expropriate land or any right in, over or in respect of land. 5
- (2) Any expropriation in terms of this section must comply with the Constitution of the Republic of South Africa, 1996, particularly sections 25 and 33, and must be effected in accordance with—
- (a) any legislation which specifically deals with expropriation enacted after the commencement of this Act; 10
  - (b) the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and
  - (c) any regulation which may be prescribed.
- (3) The Commission may exercise the power contemplated in subsection (1)—
- (a) only for a public purpose or in the public interest; and
  - (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court. 15
- (4) The exercise of a power to expropriate land or any right in, over or in respect of land under subsection (1) may not be impeded or stopped solely on the ground that the value of the property is affected by such exercise of power. 20

### **Management Committee**

6. (1) The Management Committee of the Commission is hereby established.
- (2) The Management Committee and its chairperson are appointed by the President and consists of such members of the Commission as the President may determine.
- (3) The Management Committee must assist the Commission to carry out its 25 functions, which may include—
- (a) ensuring that decisions of the Commission are given effect to;
  - (b) overseeing the functions performed by the Secretariat;
  - (c) monitoring the implementation of strategic integrated projects, subject to the guidance and directions of the Commission; 30
  - (d) ensuring coordinated regulatory approvals;
  - (e) considering reports submitted to it by the Secretariat;
  - (f) requesting the Secretariat to undertake particular investigations and to provide analyses of and make recommendations on issues relating to the implementation of infrastructure development; 35
  - (g) reviewing reports and make recommendations to the Commission to ensure the harmonisation and improvement of implementation actions, policies, and laws relating to infrastructure development and investment in infrastructure;
  - (h) taking such decisions of the Commission as the Commission may assign to it; and 40
  - (i) performing any other function of the Commission delegated or assigned to it by the Commission.
- (4) The Commission may determine any matter necessary for the proper functioning of the Management Committee.
- (5) The Management Committee may determine its own procedures to be followed at 45 its meetings.

## **Part 3**

### ***Strategic integrated projects***

#### **Requirements for strategic integrated projects and designation of SIP Chairpersons** 50

7. (1) A project or group of projects qualifies as a strategic integrated project for the purposes of this Act if—
- (a) it comprises of one or more installation, structure, facility, system, service or process relating to any matter specified in Schedule 1;
  - (b) it complies with any of the following criteria: 55

- (i) It would be of significant economic or social importance to the Republic;
- (ii) it would contribute substantially to any national strategy or policy relating to infrastructure development; or
- (iii) it is above a certain monetary value determined by the Commission; and
- (c) the Commission has included the project in the national infrastructure plan and has, in terms of section 8, designated the project as a strategic infrastructure project. 5

(2) The Commission may for the purposes of subsection (1)(b)(iii) determine different values for different types of strategic integrated projects or for different categories of strategic integrated projects. 10

(3) The Commission must designate as Chairperson of a strategic integrated project the Minister under whose portfolio a strategic integrated project falls or, where different components of a strategic infrastructure project fall under different portfolios, such Minister as the Commission may determine as principally responsible for the strategic integrated project. 15

(4) The SIP Chairperson shall as soon as possible after the Commission has designated a strategic integrated project—

- (a) convene and chair a forum of executive authorities that are involved in the strategic integrated project from the three spheres of government;
- (b) coordinate implementation of the strategic integrated project that she or he chairs; 20
- (c) ensure that the steering committee of the strategic integrated project provides information as required by the Secretariat; and
- (d) promote the alignment of relevant government activities in support of implementation, operation and maintenance of the strategic integrated project. 25

#### **Designation of strategic integrated projects and conflicts in infrastructure or planning thereof**

**8.** (1) The Commission must, by notice in the *Gazette*, designate strategic integrated projects for the purposes of this Act.

(2) If the Commission designates a strategic integrated project which must be implemented, it must determine whether the State or the organ of state has the capacity to implement the project or whether the project must be put out to tender.

(3) (a) Such Minister as the Commission may determine must, whenever the Commission decides that a strategic integrated project must be implemented and put out to tender by notice in the *Gazette* and in at least one national newspaper, request the relevant accounting officers or accounting authorities to call for such tenders. 35

(b) The request to the relevant accounting officers or accounting authorities must be made in consultation with the Members of Cabinet responsible for the portfolios under which the infrastructure components fall.

(4) (a) Where a strategic integrated project has been designated for implementation, every organ of state must ensure that its future planning or implementation of infrastructure or its future spatial planning and land use is not in conflict with any strategic integrated project implemented in terms of this Act. 40

(b) Paragraph (a) does not derogate from any power of a province or municipality to implement any infrastructure project which falls outside the ambit of a strategic integrated project. 45

(c) Any conflict which arises in the application of paragraph (a) must be resolved in terms of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), subject to any national legislation regulating spatial planning and land use management.

#### **Part 4** 50

#### ***Implementing structures of the Commission***

#### **Secretariat of Commission**

**9.** (1) The Secretariat of the Commission is hereby established.

(2) The Secretariat is appointed by the President and consists of—

- (a) the Minister as chairperson of the Secretariat; and 55
- (b) such Ministers and Deputy Ministers as the President may determine.

## Functions of Secretariat

- 10.** The Secretariat must—
- (a) enable and facilitate operations relating to the implementation and long term utilisation of any strategic integrated project;
  - (b) coordinate the implementation of any strategic integrated project; 5
  - (c) appoint members to a steering committee;
  - (d) appoint a SIP coordinator to chair the steering committee for a strategic integrated project and to coordinate and facilitate the implementation of the strategic integrated project;
  - (e) ensure that members of a steering committee have the necessary skills and capabilities to properly perform their functions; 10
  - (f) issue guidelines relating to the manner in which a steering committee must perform its functions;
  - (g) drive and direct the work of a steering committee;
  - (h) interact with and ensure coordinated interaction within steering committees; 15
  - (i) ensure the successful finalisation of the work of a steering committee;
  - (j) manage the implementation of the day to day work of the Commission and regularly report to the Management Committee and to the Commission; and
  - (k) perform such other functions as the Management Committee and the Commission may assign to it. 20

## Main purposes of steering committees

- 11.** The main purposes of a steering committee are, for all phases in the implementation and utilisation of a strategic integrated project—
- (a) to develop mechanisms to identify and determine the different projects which constitute a strategic integrated project, and submit them for approval by the Secretariat; 25
  - (b) to identify ways and means of giving effect, in the most effective, efficient and expeditious manner, to the Commission's decision to implement a strategic integrated project and in so doing, to ensure the prompt compliance with all applicable laws; 30
  - (c) within a period specified by the Minister, to develop and adopt a project plan for approval by the Secretariat for the implementation of the strategic integrated project in the most effective and expeditious manner;
  - (d) to facilitate and monitor the implementation of the strategic integrated project;
  - (e) to coordinate the work of all members of the steering committee; 35
  - (f) to meet regularly with the SIP Chairperson; and
  - (g) to serve as a one-stop-shop where any matter relating to the implementation of a strategic integrated project can be resolved.

## Appointment and composition of multidisciplinary steering committees

- 12.** (1) A steering committee consists of the SIP coordinator as described in section 10(d) and of persons representing departments and other organs of state affected by the strategic integrated project, and may consist of, among others—
- (a) officials representing departments in the three spheres of government responsible for environment, water, public works, finance, economic development, spatial planning, land use management or any other relevant portfolio or representing any other person who will be required to grant an approval, authorisation, exemption, licence, permission or exemption necessary for the implementation of the strategic integrated project; 45
  - (b) a member of the Construction Industry Development Board established by section 2 of the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000); and 50
  - (c) any other person appointed by the Secretariat based on expert knowledge or skills.
- (2) The SIP coordinator is the chairperson of the steering committee.
- (3) In the event that the SIP coordinator is an entity, that entity shall nominate for approval by the Secretariat a suitably qualified individual to act as chair of the steering committee. 55



(4) The Director-General or head of a public entity responsible for an aspect of infrastructure remains the Accounting Officer or Accounting Authority in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), or the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003). 5

(5) A member of a steering committee must have relevant knowledge, skills and experience in his or her field of work so as to enable the steering committee to perform its functions effectively and expeditiously.

(6) A member of a steering committee—

(a) has, subject to section 20(4), the authority to take decisions on behalf of the organ of state he or she represents, excluding any decision to grant an approval, authorisation, license, permission or exemption; and 10

(b) has direct access to the head of the organ of state he or she represents, the Management Committee and the Secretariat and any of its members.

(7) (a) A member of the steering committee must be available at all times to perform his or her functions as a member of the steering committee. 15

(b) Membership of a steering committee may not be delegated without the approval of the Commission.

(8) The Secretariat may, on good cause shown and following a recommendation by a steering committee— 20

(a) appoint additional members to the steering committee; and

(b) secure the services of or assistance or advice from any person who is not a member of the committee.

(9) The Commission may at any stage of the implementation of a strategic integrated project reconstitute the steering committee in order for it to reflect the necessary skills and expertise required for the implementation of the particular stage. 25

(10) The Secretariat must dissolve a steering committee upon completion of its functions.

(11) Any SIP coordinator, steering or technical committee which had been appointed in respect of a strategic integrated project prior to the commencement of this Act and which existed immediately prior to the date of commencement of this Act continues to exist and must be regarded as having been appointed in terms of this section. 30

### **Disqualification from membership of steering committees, disclosure and offences relating thereto**

**13.** (1) For the purposes of this section- 35

“**family member**” means, in relation to a member of a steering committee—

(a) a person who is related to the member biologically or by statutory law including affinity by marriage, adoption or foster care, or by customary or religious law or custom; or

(b) a permanent life partner; 40

“**public office**” means any appointment or position in the service of the State, a public entity or a national or provincial government component contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999), and includes any such appointment or position in any legislative or executive organ of the State in any sphere of government or in any court contemplated in section 166 of the Constitution of the Republic of South Africa, 1996. 45

(2) This section applies to a member of a steering committee who occupies a public office.

(3) A person who occupies a public office may not be appointed as a member of a steering committee or remain a member of such committee— 50

(a) if he or she or his or her family member would benefit financially, in any manner whatsoever whether directly or indirectly, from the strategic integrated project for which the steering committee was appointed; or

(b) if he or she or his or her family member has any direct or indirect interest in any business or organisation which would in any manner whatsoever benefit financially from the strategic integrated project. 55

(4) If, after the appointment of a member of a steering committee, it appears that the member would benefit from or has an interest in any business or organisation which would benefit from a strategic integrated project, as contemplated in subsection (3), the member must without delay— 60

(a) in writing disclose that fact to the steering committee and the Minister; and

(b) resign from the steering committee.

(5) A member of the steering committee may not be present or take part in the discussion of, or the taking of a decision on, any matter before the steering committee relating to the strategic integrated project for which the steering committee was appointed in which that member or his or her family member, business partner or associate has any direct or indirect financial interest. 5

(6) A member of a steering committee or his or her family member, business partner or associate, or an organisation or enterprise in which a member of the steering committee or his or her family member, business partner or associate has a direct or indirect interest, may not— 10

(a) offer goods or services or conduct any business in relation to the strategic integrated project for which the steering committee was appointed; or

(b) make improper use, in any manner whatsoever, of the position of member of a steering committee or of any information acquired by virtue of his or her position as a member of a steering committee. 15

(7) (a) Any member of a steering committee who fails to comply with subsection (4)(a) or (b) or who contravenes subsection (5) is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding five years or to both a fine and such imprisonment.

(b) Any person who contravenes subsection (6) is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding five years or to both a fine and such imprisonment. 20

(8) (a) Any former member of a steering committee who failed to comply with subsection (4)(a) or (b) or who contravened subsection (5) or (6) while he or she was a member of a steering committee commits an offence and is liable on conviction to a fine or to imprisonment not exceeding five years or to both a fine and such imprisonment. 25

(b) Any person, other than the member, referred to in subsection (6), who contravened subsection (6) during the tenure of the former member, commits an offence and is liable on conviction to a fine or to imprisonment not exceeding five years or to both a fine and such imprisonment. 30

### **Functions of steering committees**

**14.** (1) The steering committee must, for projects that fall within the state sector but that may be built or operated by either the public or private sector—

(a) identify the projects required for the implementation of a strategic integrated project; 35

(b) identify opportunities for localisation, which include local job creation and local procurement of goods and services, as well as other opportunities, to ensure that the strategic integrated project contributes to the objects of the Act;

(c) develop and adopt one or more project plans, including feasibility, financial, operational and maintenance plans, setting out actions, targets and periods of time for the strategic integrated project and submit the plans to the Commission for approval; 40

(d) identify and ensure compliance with the laws applicable to the strategic integrated project;

(e) determine the approvals, authorisations, licences, permissions or exemptions required to implement the strategic integrated project; 45

(f) ensure that all appropriate persons are appointed as members of the steering committee;

(g) take all reasonable steps that will assist any relevant authority required to decide an approval, authorisation, license, permission or exemption to take such decision; 50

(h) facilitate the implementation of the strategic integrated project;

(i) report progress on all phases of the planning, development and implementation of a strategic integrated project to the Secretariat; and

(j) bring to the attention of the Secretariat challenges or matters that it is unable to resolve for resolution or direction, including proposed remedial actions for consideration by the Secretariat. 55

(2) Each member of the steering committee must evaluate the strategic integrated project from the perspective of his or her area of expertise and—

(a) identify what is required for the expeditious and effective implementation; 60

- (b) identify challenges presented by the strategic integrated project that will impede or delay the implementation of the project, and identify associated remedial actions required;
  - (c) identify amendments required to the strategic integrated project to ensure proper implementation; and 5
  - (d) identify the amendments required to be effected to the strategic integrated project to ensure compliance with applicable laws.
- (3) The Secretariat may issue guidelines relating to the manner in which effect must be given to subsections (1) and (2).

#### **Approvals, authorisations, licences, permissions and exemptions** 10

**15.** (1) When the steering committee has determined the approvals, authorisations, licences, permissions and exemptions required to enable the implementation of the strategic integrated project, it shall inform, without any delay, the applicant to submit all applications simultaneously for consideration by the persons authorised by the relevant laws to take the applicable decisions. 15

(2) A member of the steering committee referred to in section 12(1)(a), must do everything possible within his or her power to ensure that an application—

- (a) complies with applicable legislative and other requirements; and
- (b) includes all relevant information to enable the relevant authority to consider the application without delay. 20

(3) A member of the steering committee referred to in section 12(1)(a) must monitor the processing of the application and report to the steering committee any regulatory concerns emerging for exploration or consideration of solutions thereto.

(4) If the approval, authorisation, licence, permission or exemption is not granted the relevant authority must provide reasons for such refusal to the steering committee and the applicant. 25

(5) The steering committee must, without delay, report to the Secretariat the outcomes of all applications for approvals, authorisations, licences, permissions and exemptions.

#### **Steering committees and procedures**

**16.** (1) A steering committee may determine its own procedures to be followed at its meetings. 30

(2) A steering committee must submit a progress report to the Secretariat at least on a monthly basis.

(3) (a) The Minister who chairs a strategic integrated project contemplated in this Act must cause to provide a steering committee with such secretarial or administrative support and with accommodation and work related facilities as may reasonably be required for the proper functioning of the steering committee or may, by agreement with the Minister, request the Economic Development Department to provide such facilities and support. 35

(b) The costs relating to the functioning of a steering committee are borne by the Department of the Minister who chairs unless otherwise agreed as set out in paragraph (a). 40

### **Part 5**

#### **Processes**

#### **Processes relating to implementation of strategic integrated projects** 45

**17.** (1) Whenever any strategic integrated project is implemented in terms of this Act any processes relating to such implementation, including processes relating to any approval for any approval, authorisation, licence, permission or exemption and processes relating to any consultation and participation must, as far as it is possible and in order to expedite the matter, run concurrently. 50

(2) The processes set out in Schedule 2 provide a framework and guide for the implementation of any strategic integrated project, but the time-frames in Schedule 2 may not be exceeded.

## Environmental assessments

**18.** Whenever an environmental assessment is required in respect of an integrated strategic project, such assessment must be done in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998), with specific reference to Chapter 5.

### Part 6

5

#### General provisions

#### Reporting by Minister

**19.** (1) The Minister must, on a quarterly basis, report to the Commission and to the Management Committee on each strategic integrated project.

(2) The report contemplated in subsection (1) must be in the form and contain the information determined by the Commission. 10

#### Delegation and assignment

**20.** (1) The Minister may delegate or assign any power granted to or duty imposed upon him or her in terms of this Act to an officer in the Department, except the power to make regulations. 15

(2) A power or duty so delegated or assigned must be exercised or performed in accordance with the directions of the Minister, who may at any time withdraw such delegation.

(3) A delegation or assignment under subsection (1) does not prevent the Minister from exercising the power or performing the duty in question himself or herself. 20

(4) (a) Subject to paragraph (c), a member of a steering committee may exercise or perform any power or duty on behalf of the organ of state he or she represents, if such power or duty is delegated or assigned to the member of the steering committee by virtue of any law.

(b) The head of an organ of state may, for the purposes of paragraph (a) and in so far as legislation administered by that organ of state does not provide for a delegation or assignment of a power or duty contemplated in that paragraph, delegate or assign the power or duty to the relevant member of the steering committee by virtue of this subsection. 25

(c) The power to grant an approval, authorisation, licence, permission or exemption may not be delegated in terms of this section. 30

#### Regulations

**21.** (1) The Minister may, in consultation with the Commission, make regulations regarding—

(a) any matter that may or must be prescribed in terms of this Act; 35

(b) the criteria that must be applied in the implementation of a strategic integrated project, relating to—

(i) skills development;

(ii) Green Economy;

(iii) employment creation; 40

(iv) youth employment;

(v) rural development; and

(vi) Broad-Based Black Economic Empowerment;

(c) the monetary values in respect of strategic integrated projects, contemplated in section 7; and 45

(d) generally, any ancillary or incidental administrative or procedural matter which is necessary or expedient to prescribe for the proper implementation or administration of this Act.

(2) The Minister must consult with the relevant Minister in making regulations relating to criteria set out in subsection (1)(b). 50

**Short title and commencement**

**22.** This Act is called the Infrastructure Development Act, 2013, and takes effect on a date determined by the President by proclamation in the *Gazette*.

**SCHEDULE 1**

*(Section 7(1)(a))*

National and international airports

Communication and information technology installations

Education institutions

Electricity transmission lines

Health care facilities

Human settlements and related infrastructure and facilities

Economic facilities

Mines

Oil or gas pipelines, refineries or other installations

Ports and harbours

Power stations or installations for harnessing any source of energy

Productive rural and agricultural infrastructure

Public roads

Railways

Sewage works

Waste management and disposal

Water works and water infrastructure

**SCHEDULE 2***(Section 17(2))***Process and periods of time**

1. Project plan approved and steering committee determines the applicable legislation and approval, authorisation, licence, permission or exemption required.
2. Applicant compiles and submits an application and project plan for consideration by the relevant authority. 7 days
3. Public consultation process on the application and project plan. 30 days
4. Application and project plan amended and submitted to the relevant authority for consideration and approval. 52 days
5. Based on approved project plan preparation and submission of detailed development and mitigation plan to the relevant authority. 60 days
6. Public consultation on the development and mitigation plan and review by relevant authority. 44 days
7. Relevant authority consideration and assessment of development and mitigation plan. Regulatory decision. 57 days

## MEMORANDUM ON THE OBJECTS OF THE INFRASTRUCTURE DEVELOPMENT BILL, 2013

### 1. BACKGROUND

- 1.1 In South Africa, as in every country, infrastructure underpins economic and social development. Both the New Growth Path and the National Development Plan stress the importance of infrastructure as a jobs driver. They agree that a central task for the state is to ensure that infrastructure grows sufficiently to serve the expanding economy and population, and that it is built, operated and maintained efficiently and cost-effectively.
- 1.2 Investment in infrastructure is a particular imperative for South Africa because apartheid was characterised by underinvestment in infrastructure in black communities, especially in the rural areas. This situation hobbled economic and social development in these regions, making it more difficult for enterprises to take advantage of economic opportunities and undermining efforts to improve health, education and security.
- 1.3 Given scarce resources, addressing these backlogs while maintaining adequate infrastructure for the economy and fast-growing areas requires careful prioritisation and collaboration. The division of responsibilities for infrastructure across the state, from the national departments to state-owned companies to municipalities and regulatory bodies, leads to the risk of contradictory plans and priorities or uncoordinated implementation with cost-raising and development-dampening effects.
- 1.4 To ensure a more strategic and coordinated response to these challenges, in October 2011 the government established the Presidential Infrastructure Coordinating Commission (PICC). The Commission is led by the President with the main infrastructure and economics Ministers, Premiers of Provinces, mayors of the metros and the chair of the South African Local Government Association (SALGA) as members. Work is coordinated through a Management Committee made up of members drawn from the PICC. The PICC is backed by a Secretariat comprised of Ministers and Deputy Ministers, and a technical team.
- 1.5 Since its establishment, the PICC has succeeded in bringing about a more coherent, visionary and large-scale infrastructure programme. Key achievements include the following:
  - In February 2012, Cabinet adopted the first National Infrastructure Plan, which was developed by the PICC. The Plan identifies 18 Strategic Integrated Projects (SIPs), which constitute related projects required to achieve core outcomes, including regional development, improved social services and enhanced logistics, energy security, water supply and access to broadband as well as social infrastructure such as schools, universities, sanitation systems, hospitals and clinics.
  - The PICC designated public agencies to coordinate each SIP and convened launches that brought together key stakeholders across the state, ensuring clarity about their responsibilities.
  - The share of public investment has risen from a post-2008 low of 6,8% of the GDP at the end of 2010 to 7,6% in the second quarter of 2013. The New Growth Path sets a target of 10%.
  - The PICC has established a system to ensure quarterly monitoring and evaluation of progress on SIPs, and intervenes to support progress as required.



## 2. OBJECTIVES OF THE BILL

The Bill provides a legal mandate for the PICC and its structures, and for maintenance of the National Infrastructure Plan. Specifically:

- it maintains the national structures of the PICC as currently constituted;
- it mandates on-going updating and extension of the National Infrastructure Plan to ensure that it continues to provide clarity about infrastructure priorities and timeframes;
- it identifies key developmental elements of the infrastructure programme;
- it clarifies the role of departments and agencies in managing SIPs; and
- it establishes procedures and structures to minimise unnecessary delays in planning SIPs and in obtaining authorisations, permits and licences for the projects that they incorporate.

## 3. DETAILED ANALYSIS OF THE PROVISIONS OF THE BILL

3.1 **Part 1** includes the definition section and the objects of the Act, which are essentially as stated above.

3.2 **Part 2** provides for the structures and functioning of the PICC. To that end, it mandates that the Council have as members the President, Deputy President, Ministers nominated by the President, all Premiers and the executive mayors of the metropolitan councils and the chair of SALGA, with the President as chair.

In **clause 4**, it defines the functions of the PICC as developing, maintaining, and coordinating the implementation and monitoring of the National Infrastructure Plan; designating SIPs and ensuring co-operation across the state to implement them; evaluating the impact of infrastructure projects on economic and developmental goals; addressing obstacles to implementation of infrastructure plans; and maximising their developmental outcomes.

**Clause 5** gives the PICC the right to expropriate land in line with the Constitution.

**Clause 6** empowers the President to establish a Management Committee for the PICC and determine its members from amongst the members of the PICC, and defines its functions.

3.3 **Part 3** establishes the criteria for designating a SIP, based essentially on its national importance and/or scale, and its inclusion in the National Infrastructure Plan. It empowers the PICC to designate a Minister to chair a SIP, with the responsibility in particular of ensuring coordinated support across the state. It also provides that the PICC must determine if a SIP should be put out to tender and, in that case, empowers the PICC to request a Minister to initiate the tender process through the relevant Accounting Officer.

3.4 Part 4 defines the roles of the implementing structures of the PICC — that is, the Secretariat and the SIP Steering Committees.

3.4.1 The Secretariat is chaired by the Minister of Economic Development and comprises relevant Ministers and Deputy Ministers as determined by the President. The Secretariat is responsible for driving implementation of the SIPs, appointing their coordinators and steering committees, monitoring and evaluating progress, and issuing guidelines and frameworks for the implementation of the SIPs.

3.4.2 The Secretariat will designate a SIP steering committee for each SIP. The steering committees develop the specific plans for the SIP and manage their implementation, including helping address specific regulatory delays and other blockages, and securing developmental outcomes. They are chaired by SIP coordinators, which are generally a relevant department or other state agency, and their members represent relevant state entities, the Construction Industry Development Board (CIDB), and where appropriate experts appointed by the PICC Secretariat. For individual projects, the relevant Director General or head of a public entity remains as the Accounting Officer under the applicable legislation.

3.4.3 **Clause 13** includes provisions to prevent conflict of interest on the part of steering committee members.

**Clause 14** lays out the specific responsibilities of the steering committees.

3.5 **Part 5** requires that processes required to implement a SIP, including approvals, licences, authorisations and exemptions, should be managed as expeditiously as possible. Schedule 2 provides timeframes for specific processes.

**Clause 18** specifically provides for Environmental Impact Assessments.

3.6 **Part 6** includes general provisions, in particular:

- a requirement that the Minister of Economic Development, as chairperson of the Secretariat, provides a quarterly progress report to the PICC;
- authorisation for delegations by the various role-players in the PICC structures; and
- in **clause 21**, provisions empowering the Minister of Economic Development to issue regulations and implementation frameworks for the SIPs.

3.7 Schedule 1 defines the scope of the Act, essentially comprising major kinds of infrastructure. Schedule 2 provides timeframes for SIP planning and public consultation.

#### **4. DEPARTMENTS OR BODIES CONSULTED**

The Bill was drafted by the Economic Development Department in consultation with the Office of the Chief State Law Adviser and the PICC MANCO. The Bill was gazetted for comment on 6 February 2013, and the comments have been taken into consideration. Nedlac was consulted and agreed that the Bill falls outside of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994), since it essentially relates to the internal organisation of the state.

#### **5. FINANCIAL IMPLICATIONS FOR STATE**

Departmental budgets will, through the normal budgetary processes, cover the cost of infrastructure programmes and coordination

#### **6. PARLIAMENTARY PROCEDURE**

6.1 The State Law Advisers and the Economic Development Department are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

- 6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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