

REPORT OF THE COMMITTEE ON COMMUNICATIONS, TRANSPORT, WORKS AND SUPPLY ON THE TOLLS BILL, N.A.B. NO 1 OF 2011, FOR THE FIFTH SESSION OF THE TENTH NATIONAL ASSEMBLY APPOINTED ON 22ND SEPTEMBER, 2010

Consisting of:

Mr B Imenda, MP (Chairperson); Mrs E M Banda, MP; Mr G Chazangwe, MP; Mr J C Kasongo, MP; Mr W Banda, MP; Mr W Nsanda, MP; Mr A Sejani, MP; and Mr C M M Silavwe, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir

Your Committee has the honour to present its Report on the Tolls Bill, N.A.B. No 1 of 2011, referred to it by the House on 1st March, 2011.

FUNCTIONS OF THE COMMITTEE

2. In addition to any other duties conferred upon it by the Honourable, Mr Speaker, or any order of the House, your Committee may consider any Bills referred to it by the House.

MEETINGS OF THE COMMITTEE

3. Your Committee held a total number of seven (7) meetings to consider the Tolls Bill, N.A.B. No 1 of 2011.

PROCEDURE ADOPTED BY THE COMMITTEE

4. Your Committee, in considering the Bill, requested for both written and oral submissions from relevant stakeholders.

OBJECTS OF THE BILL

5. The objects of the Bill are to:

- (a) establish and provide for the operation of toll roads;
- (b) provide for the charging and collection of tolls;
- (c) provide for private sector participation in the tolling of roads;
- (d) repeal and replace the *Tolls Act*, 1983; and
- (e) provide for matters connected with, or incidental to, the foregoing.

CONSIDERATION OF THE BILL

Background

6. The Tolls Bill, N.A.B. No 1 of 2011 seeks to repeal and replace the *Tolls Act*, 1983, so as to establish and provide for the operation of toll roads, provide for the charging and collection of tolls and provide for private sector participants in the tolling of roads.

Since its enactment in 1983, the *Tolls Act* was never successfully implemented due to various factors prevailing over the years that hampered its implementation. The Act was, therefore, overtaken by several events. This has resulted in the need to comprehensively revise the *Tolls Act* in order to bring it in line with contemporary trends in the road sector.

SALIENT PROVISIONS OF THE BILL

7. Your Committee wishes to highlight the salient features of the Bill as set out hereunder.

Part I – Preliminary

This part provides for the short title of the Bill and the interpretation of key terms which are used in the Bill.

Clause 2 – Interpretation

Clause 2 defines key terms used in the Bill such as “Agency”, “concessionaire”, “Concession agreement”, “development”, “toll”, “toll collector” and “toll road”.

Part II – Administration

Clause 3 – Designation of Toll Authority

Clause 3 designates the Agency as the responsible body for the administration and implementation of the provisions of this Act.

Clause 4 – Functions of Agency

Clause 4 outlines the functions of the Agency which, among other things, include regulating the operation and maintenance of toll roads, monitoring compliance of concessionaires with the terms and conditions of concession agreements and advising the Minister on the design, construction, safety, regulation, operation and maintenance of toll roads.

Clause 5 – Inspectorate Unit

Clause 5 authorises the Agency to establish an inspectorate unit under the general supervision of the Director. The Clause also empowers the Agency to appoint any suitable person to be an inspector on such terms and conditions as the Agency may determine.

Further, Clause 5 also provides that a person appointed as an inspector shall, in performing any function, be in possession of a certificate of appointment as an inspector. An inspector is authorised, with a warrant to, among other things, enter and search any toll facility or vehicle that the inspector has reasonable ground to believe is being used for the commission of an offence; examine any document or article found within the toll facility or vehicle that has a bearing on the investigation and take extracts from, or make copies of, any book or document found in the toll facility or vehicle that has a bearing on the investigation.

Furthermore, Clause 5 further places an obligation on an inspector to furnish the Agency with a written report and any other information relating to an inspection as the Agency may require.

Clause 6 – Toll Collectors

Clause 6 authorises the Agency to appoint any suitable person as a toll collector on terms and conditions determined by the Agency. A toll collector is required to remit to the Agency and toll collected in the manner prescribed by the Minister.

Part III – Tolls

Clause 7 – Imposition of Toll

Clause 7 provides for the imposition of a toll on a public road.

Clause 8 – Toll Points

Clause 8 authorises the Agency to operate toll points and erect and maintain structures necessary for operating toll points on any road, bridge, pontoon or other place.

Clause 9 – Payment of Toll

Clause 9 places an obligation on a driver of a vehicle passing through a toll point to pay the toll in respect of that vehicle to the toll collector.

Clause 10 – Exemptions

Clause 10 authorises the Minister, by statutory instrument, to exempt any vehicle or class of vehicles from the payment of toll. Free passage on toll roads shall be granted to among other vehicles, military vehicles and any authorised emergency vehicles including fire department and police vehicles.

Clause 11 – Use of Toll Fees

Clause 11 places an obligation on the Agency to deposit the entire toll fee collected into the Road Fund to be used exclusively for the construction, maintenance and rehabilitation of roads.

Clause 12 – Suit for Recovery

Clause 12 authorises the Government to recover any toll payable under this Act as a civil debt in the event of any default by a person liable to pay a toll.

Clause 13 – Register

Clause 13 places an obligation on a toll collector to keep and maintain a register of all vehicles paying the toll at the toll point. The toll collector is also required to submit to the Agency in the prescribed form such periodic returns of the payment of the tolls.

Part IV – Concession Agreements

Clause 14 – Concession Agreement

Clause 14 empowers the Minister to authorise any person to operate and maintain any toll road under a concession agreement. The Minister is also empowered to prescribe, by statutory instrument, the contents of concession agreements.

Clause 15 – Exercise of Toll Road Function by Concessionaire

Clause 15 empowers the concessionaire to exercise such functions in relation to a toll road as specified in the concession agreement. This Clause also places an obligation on the concessionaire to collect and retain the toll levied and collected, pursuant to the concession agreement.

Clause 16 – Exercise of Toll Road Function by Agency

Clause 16 permits the Agency, with the approval of the Minister, to exercise a toll road function that is exercisable by a concessionaire in an emergency or where its exercise is necessary in the interests of road safety.

Clause 17 – Utility Contracts

Clause 17 authorises the concessionaire, in relation to the exercise of a toll road function, to enter into arrangements with a specified organisation for the provision of any prescribed utility service on a toll road.

Clause 18 – Duty to Maintain Toll Road

Clause 18 places an obligation on a concessionaire to maintain the toll road to which the concession agreement relates in good repair and condition and in accordance with sound engineering and operating practices.

Clause 19 – Closure of Toll Road

Clause 19 permits the concessionaire to close part of a toll road to traffic in order to do work on the toll road for such time as is necessary to do work. However, the concessionaire is required, in all cases, to keep the toll road open to traffic travelling in both directions. The concessionaire is also permitted to close a toll road on the occurrence of any incident on the toll road that endangers the life, health or safety of persons using the toll road.

Clause 20 – Power of Concessionaire to Assign or Delegate

Clause 20 permits a concessionaire, subject to such terms and conditions as the Minister may approve, to assign or delegate all or part of the concessionaire's rights and obligations under the concession agreement.

Clause 21 – Transfer on Termination of Concession Agreement

Clause 21 provides that a concession agreement may, on the termination of the agreement, provide for the transfer of such property, rights and liabilities of the concessionaire to the Agency.

Part V – General Provisions

Clause 22 – General Offences and Penalties

Clause 22 provides that a person who fraudulently or forcibly drives a vehicle through a toll point or without paying the toll or who, having collected any toll, fails or refuses to remit the toll to the Agency or uses any part of a toll road which is closed to traffic commits an offence.

Clause 23 – Summary Imposition of Penalties

Clause 23 provides that an inspector or a toll collector may, where satisfied that a person has committed an offence for which the penalty does not exceed two hundred thousand penalty units or where a person has admitted the commission of an offence under this Act for which the penalty does not exceed two hundred thousand penalty units, summarily demand from the person the payment of a fine not exceeding six thousand penalty units in respect of the offence.

Clause 24 – Forfeiture of Certain Vehicles

Clause 24 provides that upon the conviction of an offender, the court may, in addition to any other sentence, order the forfeiture of any vehicle whose owner, the court is satisfied, was a party to the offence or that the offence was committed with the knowledge of such owner.

Clause 25 – Regulations

Clause 25 empowers the Minister to make regulations for the better carrying out of the provisions of the Act including the toll to be levied under this Act and manner of payment and collection of the toll, the designation of any road as a toll road and the toll that shall be charged during the concession period or any part thereof.

Clause 26 – Repeal of Cap 465

Clause 26 repeals the *Tolls Act* No 11 of 1983.

CONCERNS FROM STAKEHOLDERS

8. In welcoming the Tolls Bill, N.A.B. No 1 of 2011, the stakeholders who appeared before your Committee expressed both supporting and dissenting views as set hereunder.

- (i) The Bill is welcome because it fulfills the aspirations of most motorists and the public at large, who complain that Zambian roads are damaged by foreign road users who pay little for using them. Most motorists are aware of toll fees which are paid by road users in other countries, especially in South Africa and wonder why the same cannot be done in Zambia. In this regard, they are of the view that, the proposed introduction of toll fees on our roads is long overdue.
- (ii) The establishment and operations of the toll roads is a welcome development because the construction and repairing of Zambian roads had for a long time been donor dependent. Once this Bill is in place, Government will generate enough revenue to construct and repair roads using locally generated funds.
- (iii) The local authorities should be involved in the administration of toll fees to enhance maintenance of roads within their jurisdiction. Further, as shown in Parts I and II of the Bill and in particular Clauses 3 and 4 on Administration, there is need to ensure proper coordination between district councils and the Agency on the administration of toll fees so that the maintenance of roads in the country is streamlined. The Agency should seek to have an input in the development of the Annual Work Plans for Councils in respect of the roads that are targeted for maintenance using toll fees.
- (iv) Part III of the proposed Bill on payment of toll fees was seen as a source of concern in that the public service drivers and operators are already subjected to a lot of levies. In this regard, once the Bill is passed, it will lead to the introduction of yet another levy to the public service drivers and operators. If not properly handled, this law will affect the public transport industry because when there is an increase in any service related area such as fuel or duty on motor vehicles, it automatically attracts an increase on the transport fares. It is more likely that the enactment of this Bill will bring in an outcry from bus drivers, operators and the general public that it is a way of over-taxing them.
- (v) Motorists will appreciate an additional contribution towards the roads as long as there is transparency and accountability in the collection of tolls and the benefit is transferred back to them.
- (vi) Clauses 7 and 8 of Part III combined, state that the Agency may operate toll points on any road, bridge, pontoon or other place. The "other place" may mean bus stations, bus stops, laybys, parking slots and taxi ranks. This is good

development because it will help remove illegal entities operating in bus stations, bus stops and taxi ranks where exorbitant illegal toll fees are charged by impostors, thereby depriving Government of the much needed revenue for road construction and repair.

- (vii) Clause 14 of Part IV permits the Minister to give concession to anyone. There is need to state the eligibility in terms of competence and skill of that person who may be authorised to operate and maintain a toll road under a concession agreement.
- (viii) Some Councils observed that although the Minister responsible for giving concessions to operate and maintain a toll road is at liberty to give concessions to anyone, preference should be given to the Councils.
- (ix) In Part II, Clause 5, the Inspectorate Unit being established has no indication whether the Inspectors will be seconded staff from other Government wings or full time employees of RDA or both. Seconded staff from other wings of Government tend to have problems in terms of reporting channels and, therefore, compromise the discipline and effective enforcement of the rules and regulations in the operations of any given organisation.
- (x) There is a possibility that if the identification process of toll points is done haphazardly, traffic congestion in cities and towns of Zambia will be worse than it is now.
- (xi) When considering toll fees/charges, care should be exercised considering that motorists are already charged other road levies such as fuel levy, carbon tax and road tax.
- (xii) Under Clause 10 of Part III, there was need to exempt vehicles used by tour operators. High toll fees on vehicles used by tour operators will eventually be passed on to the tourists, who might already be compounded by visa and other fees as they enter the country. These charges put together, may negatively affect tourist destinations such as Livingstone and Siavonga.
- (xiii) When considering exemption of specified motor vehicles under Clause 10(1), local authority vehicles need to be exempted whenever tolls are constructed within their operational areas. Vehicles such as refuse trucks, hearses, graders and operations vehicles that provide services to the residences should be exempted from toll fees.
- (xiv) With regard to the collection of toll fees, there is need to harmonise the toll gate fees with the fees collected at the one stop border facility and the truck levy collected by the Council.
- (xv) With regard to Concession Agreement under Part IV, it is not explicitly stated how one concessionaire will remit revenues/part of revenues to the Road Fund. This needs to be clearly outlined.
- (xvi) In Clause 5 of Part II, the use of the word "may" should be substituted with the word "shall" to make it mandatory for the establishment of the Inspectorate Unit as it is very important to check the operations of the concessionaire to avoid a situation where the concessionaire becomes his own inspector.

- (xvii) While it is with good intentions that all toll fees collected at a toll gate form part of the Road Fund, under Clause 11 of Part III, there might be need to first consider spending the funds on maintenance of the road from where it was collected before spending it on any other roads. This is because it would be unfair taking funds to repair and or maintain other roads while the road where the fees were collected from is in a bad state.
- (xviii) In Clause 2 of Part I, there is need to give an interpretation of "Toll Facility" a term which has been used quite often in the Bill.
- (xix) The proposed *Tolls Act* only addresses the issue of toll fees and not Entry Fees, which were also part of the *Tolls Act* of 1983. A total in excess of K90 billion is collected annually from Entry Fees and forms part of the revenues for the Road Fund.

Therefore, the repeal of the *Tolls Act* 1983 would be a draw back to the Road Fund as RTSA would have no mandate to collect Entry Fees. RTSA, therefore, proposes an amendment to the Bill to include Entry Fees.

The omission of Entry Fees would result in trade imbalance in the Transport sector between foreign and local transporters as it would disadvantage local transporters. The practice of charging both Entry Fees and Toll Fees is common in most regional countries that have introduced toll fees on their roads like Zimbabwe.

- (xx) According to the 2011 Budget for the Road Fund, out of K3, 044 Billion, only K484 Billion is expected from Road User Fees. The measure of tolling selected roads would, therefore, seek to address the funding gap requirement for the Road Fund and revenue collection from road user fees.
- (xxi) The proposed tolling of roads will most certainly have an impact on the food prices due to increased costs of transportation. This, therefore, calls for a fair pricing system which should not have an adverse effect on the economy.
- (xxii) RTSA collects Road Tax that is charged to motorists based on the usage of the road with an exemption of foreign motor vehicles. Therefore, tolling of roads given the insufficient road infrastructure, will imply that the local motorist is being charged twice for using the road. The question that arises, therefore, is whether there will be harmonisation of the current Road Tax regime with proposed tolls.
- (xxiii) In Part II, Clause 5, an inspector has been empowered to search any person if the inspector has reasonable grounds to believe that the person has possession of any document or article that has a bearing on the investigation and also has been empowered to search any toll facility or vehicles that the inspector has reasonable grounds to believe it is being used for the commission of an offence or contrary to the provisions of this Act.

There is a contention that the searching of vehicles for the compliance of this Act should be done by the Zambia Police Force, who are mandated to enforce traffic regulations and, therefore, these police officers would not require a warrant in the execution of traffic regulations.

- (xxiv) In Part V, Clause 23, it is being advanced that there is need to amend it by substituting an Inspector for a Police Officer. In this regard, it should be police officers to demand for the proof of compliance with the Act in toll roads by way of production of receipts failure to which the vehicle will be seized and released only upon payment of the fine.

COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

9. Your Committee registers its support for the proposed Bill. In supporting the Bill, your Committee makes the following observations and recommendations as set out hereunder.

- (i) The tolling of a selected number of roads in our country is welcome and is long overdue. This measure will fulfill the aspirations of most Zambians who are of the view that Zambian roads are damaged mostly by foreign road users who pay little for using them.

In view of the foregoing, your Committee urges the Government to expedite this measure of tolling the economically viable roads with a view to urgently attending to the construction and repairing of the road network in Zambia.

- (ii) Your Committee observes that the construction and repairing of Zambian roads have been donor dependent for a long time.

Therefore, your Committee urges Government to ensure that enough locally generated revenue is collected for the construction and repairing of Zambian roads.

- (iii) Your Committee observes that local authorities have been appointed as road agents for the Road Development Agency (RDA). This mandate should go beyond carrying out road maintenance works. With the Tolls legislation in place, local authorities should be involved in one way or the other.

Your Committee, therefore, urges the Government to involve local authorities in the administration of toll fees to enhance maintenance of roads within their jurisdiction.

- (iv) Your Committee observes that different associations have sprang up in bus stations, bus stops and taxi ranks, charging exorbitant illegal toll fees, thereby depriving Government of the much needed revenue for improving such places.

In view of the foregoing, your Committee wishes to urge the Government to ensure that it removes all illegal entities operating at bus stations, bus stops, laybys, parking slots and taxi ranks as impostor toll collectors and inspectors. Your Committee, further, urges Government to replace all those illegal entities with user friendly toll collectors and inspectors from RDA.

- (v) Your Committee observes that in Clause 10 of Part III, which is dealing with the issue of exemptions on motor vehicles, which need not pay toll fees, the utility and service vehicles belonging to local authorities and those used for tour operations were left out.

In view of the foregoing, your Committee urges Government to approach this matter in two ways:

- (a) all local authority vehicles should be exempted from tolls fees since they offer different civic services to the citizens; and
 - (b) the toll fees for tour operator vehicles should be less than those of other vehicles.
- (vi) Your Committee observes that, currently, there are a number of road user charges being administered by different players.

In light of the foregoing, your Committee urges the Government to harmonise the proposed toll gate fees with all other charges such as the truck levy and all those fees collected at the one border facility.

- (vii) Your Committee observes with concern that the proposed *Tolls Act* only addresses the issue of toll fees and not Entry Fees which were a feature of the *Tolls Act* of 1983. Your Committee learnt that a total in excess of K90 billion is collected annually from entry charges and these form part of revenues for the Road Fund.

In view of the foregoing, your Committee urges Government to integrate entry charges into the proposed toll fees.

- (viii) Your Committee expresses concern with Clause 5 of Part II where an Inspector under the Act has been vested with police powers of searching persons, toll facility or any vehicles while possessing a warrant of arrest.

In view of the foregoing, your Committee wishes to recommend that the searching being proposed in this Tolls Bill should be done by the Zambia Police Force to avoid duplicity of work and unprofessional conduct.

- (ix) Your Committee observes with concern that the Bill may attract an increase in transport fares and high food prices.

In view of the foregoing, your Committee urges Government to embark on vigorous sensitisation programmes on the benefits of tolling the economically viable roads before the Bill is enacted into Law. Further, your Committee implores Government to ensure that transport fares and the pricing system for food is not adversely affected by this measure.

- (x) Your Committee observes with concern that the Government depends heavily on road users to raise revenue for construction and maintenance of roads.

In view of the foregoing, your Committee urges Government to explore other sources of raising revenue to finance road construction and maintenance instead of overburdening road users.

CONCLUSION

10. Your Committee wishes to express its gratitude to all the stakeholders who appeared before it and gave invaluable information to your Committee. The Committee also wishes to thank you, Mr Speaker, for affording it the opportunity to consider the Bill. Gratitude goes to the

Clerk of the National Assembly and her staff for the services and advice rendered to your Committee throughout the deliberations.

We have the honour, Sir, to be your Committee on Communications, Transport, Works and Supply mandated to consider the Tolls Bill, N.A.B. No 1 of 2011.

Mr B Imenda, MP
Chairperson

Mrs E M Banda, MP
Member

Mr J C Kasongo, MP
Member

Mr W Nsanda, MP
Member

Mr A Sejani MP
Member

Mr G Chazangwe, MP
Member

Mr W Banda, MP
Member

Mr C M M Silavwe, MP
Member

March, 2011
LUSAKA

Mr B Imenda, MP
CHAIRPERSON

LIST OF OFFICIALS

Mr S M Kateule, Principal Clerk of Committees
Mr G Lungu, Deputy Principal Clerk of Committees
Mr M K Phiri, Assistant Committee Clerk
Mrs M K Siwo, Assistant Committee Clerk
Mrs C K Mumba, Assistant Committee Clerk
Ms C R Mulenga, Acting Assistant Committee Clerk
Ms R Tembo, Typist
Mr R Mumba, Committee Assistant
Mr C Bulaya, Committee Assistant
Mr S M Likunyendo, Parliamentary Messenger

APPENDIX I

Witnesses

Ministry of Justice

Mrs M W Muyaba, Principal Parliamentary Counsel
Ms B Chibbonta, Parliamentary Counsel
Ms C Musonda, Parliamentary Counsel

Zambia Bus and Taxi Workers' Union

Mr J Wambai, President
Mr M Nkunika, Director

Siavonga District Council

Ms M Munalula, Acting Council Secretary
Mr O Chilanga, Director of Works
Mr S Kayama, Deputy Treasurer

Livingstone City Council

Ms D Neves, Town Clerk

Chililabombwe District Council

Mr G C Chinoya, Town Clerk

Zambia Police Force

Mr G Musamba, Commissioner of Police
Mr F Siame, Senior Superintendent
Mr Siyandenge, Assistant Commissioner
Mr N C Akapelwa, Senior Planner

Road Transport and Safety Agency

Mr R Mtonga, Acting Chief Executive Officer
Mr K Lumayi, Head Finance
Mr J Sichilima, Revenue Accountant

National Road Fund Agency

Dr A Mwanaumo, Director and Chief Executive Officer
Mr V Nyambe, Fund Manager
Mr E Kaunda, Manager – Monitoring and Evaluation

Ministry of Local Government and Housing

Mr B B Chirwa, Acting Permanent Secretary
Mr D C Zulu, Acting Director (Administration and Human Development)

Ministry of Finance and National Planning

Mr E Ngulube, Permanent Secretary (BEA)
Mr M Masiye, Acting Chief Budget Analyst
Ms M M Chikuba, Senior Budget Analyst

Ministry of Works and Supply

Engineer W Ng'ambi, Permanent Secretary

Ms B Kaonga, Director (PMD)

Ms Y M Chulu, Acting Director (CPG)

Engineer E Mwape, Chief Engineer – Design

Ministry of Communications and Transport

Mr D Sichinga, SC, Permanent Secretary

Mr R Nyundu, Road Traffic Commissioner

Mr M Kakuwa, Traffic Economist