

Approved for tabling in the House.



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2/6/2022

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT - SIXTH SESSION

THE DEPARTMENTAL COMMITTEE ON
TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT

ON

THE KENYA ROADS BOARD (AMENDMENT) BILL, 2022

(NATIONAL ASSEMBLY BILL NO. 13 OF 2022)

 THE NATIONAL ASSEMBLY	
P. O. BOX 30000, NAIROBI	
DATE:	02 JUN 2022
	DAY: THURSDAY
TABLED BY:	HON. DAVID PKESIEH CHAIRPERSON
CLERK AT TABLE:	INZOPU MURALE

DIRECTORATE OF DEPARTMENTAL COMMITTEES
CLERK'S CHAMBERS - NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

JUNE 2022

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ANNEXURES LIST

- (i) Minutes of Committee meetings on consideration of the Bill
- (ii) Signed list of Members who attended the sitting which considered and adopted the report
- (iii) Newspaper advertisement inviting the public to make representations on the Bill
- (iv) Public memoranda received by the Committee:
 - (a) The State Department of Infrastructure;
 - (b) The Institution of Engineers of Kenya; and
 - (c) Mr. David Muriuki Kageenu.

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Transport, Public Works and Housing on its consideration of the Kenya Roads Board Amendment Bill, 2022 (*National Assembly Bill No. 13 of 2022*), sponsored by the Member of Parliament, the Hon. David Pkosing, MP. The Bill was published on 18th March 2022, read a First Time on Tuesday 10th May 2022 and thereafter committed to the Departmental Committee on Transport, Public Works and Housing for review and reporting to the House pursuant to National Standing Order 127.

Following placement of advertisements in the print media on Friday 13th May, 2022 requesting for comments on the Bill from the public and relevant stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received three (3) memoranda.

The Committee discussed the Bill with stakeholders on Tuesday, 31st May, 2022. There were varied responses from the stakeholders with proposals for amendments. The Committee considered all the submissions from the stakeholders before it resolved to propose an amendment as contained in the schedule attached at the end of this Report.

The Committee wishes to sincerely thank the Offices of the Speaker and of the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate. I also take this opportunity to thank all Committee Members for their resilience and commitment towards consideration of the Bill and production of this report. The Committee further wishes to record its appreciation for outstanding services rendered by its Secretariat. The Committee equally wishes to thank all the stakeholders who participated in the consideration of the Bill for their contributions in form of views and proposals.

On behalf of the Departmental Committee on Transport, Public Works and Housing and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Kenya Roads Board (Amendment) Bill, 2022 (*National Assembly Bill No. 13 of 2022*).

HON. DAVID PKOSING, C.B.S, M.P.

Chairperson - Departmental Committee on Transport, Public Works and Housing

PART 1

1.0 PREFACE

1. Pursuant to National Assembly Standing Order 127(1), the Bill was Read a First Time on Tuesday 10th May 2022 and immediately committed to the Departmental Committee on Transport, Public Works and Housing for consideration and reporting to the House.

1.1 Committee Mandate

2. The Departmental Committee on Transport, Public Works and Housing is established under Standing Order 216(1) whose mandate, pursuant to the Standing Order 216 (5), is as follows;
 - a. *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
 - b. *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
 - c. *study and review all legislation referred to it;*
 - d. *study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - e. *investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - f. *to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - f(a). *examine treaties, agreements and conventions;*
 - g. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - h. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - i. *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - j. *examine any questions raised by Members on a matter within its mandate.*
3. Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects: -
 - a) Transport;
 - b) Roads;
 - c) Public works;
 - d) Construction and maintenance of roads, rails and buildings;
 - e) Air and seaports; and
 - f) Housing.
4. In executing this mandate, the Committee oversees the following State Departments:
 - a) The State Department of Transport;
 - b) The State Department of Infrastructure;

- c) The State Department of Housing and Urban Development;
- d) The State Department of Public Works; and
- e) The State Department of Shipping and Maritime Affairs.

1.2 Committee Membership

5. The Committee on Transport, Public Works and Housing as constituted by the House comprises of the following members:

Chairperson

Hon. David Pkosing, C.B.S., M.P.
Pokot South Constituency
Jubilee Party

Vice-Chairperson

Hon. Mercy Wanjiku Gakuya, M.P.
Kasarani Constituency
Jubilee Party

Members:

Hon. Abdul Rahim Dawood, M.P.
North Imenti Constituency
Jubilee Party

Hon. David Njuguna Kiaraho, M.P.
Ol Kalou Constituency
Jubilee Party

Hon. Johnson Many Naicca, M.P.
Mumias West Constituency
Orange Democratic Movement Party

Hon. Omar Mwinyi Shimbwa, M.P.
Changamwe Constituency
Orange Democratic Movement Party

Hon. Peris Tobiko, C.B.S., M.P.
Kajiado East Constituency
Jubilee Party

Hon. Samuel Arama, M.P.
Nakuru Town West
Jubilee Party

Hon. Ahmed Abdisalan Ibrahim, M.P.
Wajir North Constituency
Orange Democratic Movement Party

Hon. Ahmed Bashane Gaal, M.P.
Tarbaj Constituency
Peoples Democratic Party

Hon. Ali Wario Guyo, M.P.
Garsen Constituency
Orange Democratic Movement Party

Hon. Dominic Kipkoech Koskei, M.P.
Soitik Constituency
Jubilee Party

Hon. George Aladwa Omwere, M.P.
Makadara Constituency
Orange Democratic Movement Party

Hon. Gideon Mutemi Mulyungi, M.P.
Mwingi Central Constituency
Wiper Democratic Party

Hon. Kulow Maalim Hassan, M.P.
Banisa Constituency
Economic Freedom Party (EFP)

Hon. Moses Malulu Injendi, M.P.
Malava Constituency
Jubilee Party

Hon. Janet Wanyama Nangabo, M.P.
Trans-Nzoia County
Jubilee Party

Hon. Shadrack John Mose, M.P.
Kitutu Masaba Constituency
Jubilee Party

Hon. Tom Mboya Odege, M.P.

1.3 Committee Secretariat

6. The Committee secretariat comprise the following staff:

Ms. Chelagat Tungo Aaron
Senior Clerk Assistant
Head of Secretariat

Mr. Ahmed Salim Abdalla
Second Clerk Assistant

Mr. Ronald Walala
Legal Counsel I

Mr. Abdinasir Moge Yusuf
Fiscal Analyst I

Mr. Eric Kariuki
Research Officer III

Ms. Zainabu Wario
Serjeant-at-Arms

Ms. Lilly Cherotich
Protocol Officer

Mr. Yaqub Ahmed
Media Relations Officer

Mr. Collins Mahamba
Audio Recording Officer

PART 2

2.0 OVERVIEW OF THE KENYA ROADS BOARD AMENDMENT BILL, 2022 (NATIONAL ASSEMBLY BILL NO. 13 OF 2022)

2.1 Analysis of the Bill

7. The Kenya Roads Board (Amendment) Bill, 2022 seeks to amend section 6 of the Kenya Roads Board Act, 1993 to set aside 50% of the monies of the fuel levy managed by the Board for purposes of seeking additional funding for the construction and maintenance of roads as provided under section 32A of the Act.
8. Section 32A provides for the power to borrow and set aside funds to secure repayments as follows—
 - (1) The Board may, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance, borrow such monies as may be required for the proper discharge of its functions under this Act.
 - (2) The Board may, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance, where it is necessary to meet financial demands for maintenance, development and rehabilitation of roads, set aside a portion of the Fund for purposes of securing additional funding.
 - (3) The Cabinet Secretary shall make regulations for the better carrying out of this section.

PART 3

3.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

9. Following the call for submission of memoranda by the public through the placement of advertisements in the print media of Friday 13th May, 2022, the Committee received three memoranda.
10. On Tuesday 31st May 2022, the Committee discussed the Bill clause by clause with stakeholders. The Committee thereafter proceeded with report writing before adopting this report on 2nd June 2022.
11. The following stakeholders submitted written memoranda to the Committee, in response to the said call through the advertisements of 13th May, 2022—
 - (a) The State Department of Infrastructure;
 - (b) The Institution of Engineers of Kenya; and
 - (c) Mr. David Muriuki Kageenu.

(Merge this paragraph with 7 above)

12. The Committee also discussed the Bill with stakeholders on Tuesday, 31st May, 2022 at Parliament Buildings.

Consideration of the Kenya Roads Board Amendment Bill, 2022

11. While considering the Kenya Roads Board Amendment Bill, 2022 (National Assembly Bill No. 13 of 2022), the Committee took into account the written memoranda (*annexure (iv)*) and oral submissions received on the Bill.
12. The **State Department of Infrastructure** supported the proposal contained in the Bill and proposed additional amendments for inclusion in the Bill as follows—
 - (a) A reduction of the Membership of the Kenya Roads Board from the current thirteen members to nine members to align the Board with the corporate governance principles contained in the *Mwongozo* Code; and
 - (b) Exemption of interest income earned by the Kenya Roads Board, Kenya National Highways Authority, Kenya Urban Roads Authority and the Kenya Rural Roads Authority from taxation provided that the interest income is wholly used in the exercise of the respective mandates of the institutions.
13. The Committee agreed with the views of the State Department on the reconstitution of the Board Membership and the need to exempt the interest income earned by roads agencies from taxation.
14. The **Institution of Engineers of Kenya** submitted that reducing the funds of the Board available for construction and maintenance of roads by fifty percent (50%) may have a significantly negative impact on the capacity of the Roads Agencies to maintain the existing road network and will result in a significant proportion of roads not being maintained as required leading to accelerated deterioration. It was their proposal that the proportion of the funds to be set aside for the purposes of securing additional financing under Section 32A be limited to twenty percent (20%). They further proposed that any additional funding secured under Section 32A be utilized as currently stipulated in the proposed new section 6 (2) (d) to reduce the maintenance funding deficit. IEK also proposed additional provisions in the Bill to amend the Act to—
 - (a) allocate a maximum of one percent (1%) of the funds administered by the Board to the Engineers Board of Kenya (EBK) for capacity building and training programs including the Graduate Engineer Internship Program (GEIP); and
 - (b) amend the qualifications required that for a person to be the Director General of the Kenya Roads Board, he or she must be a registered Civil Engineer with a master's degree and at least fifteen years post-registration experience in highway engineering and at least ten years managerial experience in the roads sector.
15. The Committee was of the view that the proposal for allocation of monies to fund the programs of the Engineers Board of Kenya should be deferred for in-depth consideration by the next Parliament. Additionally, with regard to amending the qualification for appointment as the Director-General of the Kenya Roads Board, the Committee was of the view that such an amendment would unduly restrict the number and variety of candidates available for consideration for appointment.
16. **Mr. David Muriuki Kageenu** opposed the Bill to the extent that it proposes to allocate fifty per cent of the funds managed by the Kenya Roads Board to borrowing functions. He noted that whatever the Government intends to do can be done with the finances that they are already collecting and that there is need to practice sustainable infrastructure development. The Committee noted that the proposed use of a portion of already collected funds as collateral for borrowing shall ensure that the debt is sustainably managed.

4.0 COMMITTEE'S OBSERVATIONS

17. The Committee observed that—

- (a) There is need to reconstitute the Membership of the Kenya Roads Board to enhance its corporate governance in line with the principles contained in the *Mwongozo* Code; and
- (b) The taxation of interest income earned by the Kenya Roads Board, Kenya National Highways Authority, Kenya Urban Roads Authority and the Kenya Rural Roads Authority reduces the capability of the agencies from fully executing their mandate. It would be more beneficial for the country if such income was exempted from taxation on condition that it is wholly used in the exercise of the respective mandates of the roads agencies.

5.0 COMMITTEE'S RECOMMENDATION

18. The Committee having considered the Kenya Roads Board Amendment Bill, 2022 (National Assembly Bill No. 13 of 2022), stakeholders' comments on the Bill and the above observations recommends to the House the Bill be approved with the amendments contained in the attached Schedule.

Signed 

Hon. David L. Pkosing, C.B.S., M.P.
Chairperson

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING

Date

SCHEDULE OF AMENDMENTS

NEW CLAUSES

THAT, the Bill be amended by inserting the following new Clauses immediately after Clause 2—

Amendment of
section 7 of No. 7
of 1999.

3. Section 7(1) of the Kenya Roads Board Act, 1999 is amended—

(a) by deleting paragraph (g);

(b) in paragraph (h) by deleting the word “eight” and substituting therefor the word “five”.

Amendment of the
First Schedule of
Cap. 470.

4. The Income Tax Act is amended in Part I of the First Schedule by inserting the following new paragraph immediately after paragraph 60—

61. Interest income earned by the Kenya Roads Board, Kenya National Highways Authority, Kenya Urban Roads Authority and the Kenya Rural Roads Authority, provided that the interest income shall be wholly used in the exercise of the respective mandates of the Kenya Roads Board, Kenya National Highways Authority, Kenya Urban Roads Authority and the Kenya Rural Roads Authority.

MINUTES OF THE THIRTY THIRD (33RD) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON TUESDAY, 31ST MAY 2022 AT 10:00 AM AT THE BOARDROOM ON 4TH FLOOR, CONTINENTAL HOUSE, WITHIN PARLIAMENT BUILDINGS, NAIROBI

MEMBERS PRESENT

1. Hon. David L. Pkosing, C.B.S., M.P. – *Chairperson*
2. Hon. Mercy Wanjiku Gakuya, M.P. – *Vice Chairperson*
3. Hon. Abdul Rahim Dawood, M.P.
4. Hon. David Njuguna Kiaraho, M.P.
5. Hon. Omar Mwinyi Shimbwa, M.P.
6. Hon. Peris Pesi Tobiko, C.B.S., M.P.
7. Hon. Samuel Arama, M.P.
8. Hon. Ali Wario Guyo, M.P.
9. Hon. Dominic Koskei, M.P.
10. Hon. Kulow Maalim Hassan, M.P.
11. Hon. Shadrack John Mose, M.P.
12. Hon. Tom Mboya Odege, M.P.

MEMBERS ABSENT WITH APOLOGY

13. Hon. Johnson Many Naicca, M.P.
14. Hon. Ahmed Abdisalan Ibrahim, M.P.
15. Hon. Ahmed Bashane Gaal, M.P.
16. Hon. Gideon Mulyungi, M.P.
17. Hon. George Aladwa Omwera, M.P.
18. Hon. Janet Nangabo, M.P.
19. Hon. Moses Malulu Injendi, M.P.

SECRETARIAT

- | | | |
|-----------------------------|---|------------------------|
| 1. Ms. Tungo Chelagat Aaron | - | Senior Clerk Assistant |
| 2. Mr. Ahmed Salim Abdalla | - | Clerk Assistant II |
| 3. Mr. Sydney Okumu | - | Legal Counsel |
| 4. Mr. Collins Mahamba | - | Audio Officer |
| 5. Mr. Moses Kariuki | - | Serjeant-at-Arms |
| 6. Mr. Eric Kariuki | - | Research Officer |

SECRETARIAT

- | | | |
|--------------------------------|---|-------------------------------------|
| 1. Prof. Paul M. Maringa | - | Principal Secretary, Infrastructure |
| 2. Eng. Nathaniel Matalanga | - | Immediate IEK Past President, IEK |
| 3. Eng. Nicholas Musuni | - | Ag. SPSE, SDoI |
| 4. Eng. Abdulrashid S. Mohamed | - | D(RACM) KURA |
| 5. Mr. Rashid Mohamed | - | Director General, KRB |
| 6. Eng. Philemon K. Kandie | - | Director General, KeRRA |
| 7. Mr. Martin Agumbi | - | Director, Finance, KRB |
| 8. Eng. Ezekiel Fukwo | - | Director (R.A.&C.M.) KeNHA |
| 9. Eng. Tobias Otieno | - | GM, Infrastructure, Kenya Railways |

- | | | |
|------------------------|---|--|
| 10. Mr. David Ndirangu | - | DM, KRB |
| 11. N. Y. Muruga | - | E&C Officer, IEK |
| 12. Mr. Alex Suuji | - | PLO National Treasury |
| 13. Ms. Anne Ndung'u | - | Policy, Research and Advocacy Manager, IEK |

MIN No. TPWH 165/2022: PRELIMINARIES

The Chairperson called the meeting to order at eleven minutes past ten o'clock followed by a word of prayer. The Chairman informed the Honorable Members that the Committee was meeting stakeholders to consider their views on the Kenya Roads Board (Amendment) Bill, 2022.

The agenda of the meeting was therefore adopted after being proposed by the Hon. David Kiaraho, MP and seconded by the Hon. Samuel Arama, MP.

MIN No. TPWH 166/2022: CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS

Minutes of the 32nd sitting which was held on 24th May 2022 were confirmed as a true record of the proceedings, after having been proposed by the Hon. Abdulrahim Dawood, MP, and seconded by Hon. Tom Odege, MP.

MIN NO. TPWH 167/2022: SUBMISSIONS FROM THE MINISTRY OF TRANSPORT, AND UNFRASTRUCTURE ON THE KENYA ROADS BOARD (AMENDMENT) BILL, 2022 (NA BILLS NO. 13)

The Ministry, through the State Department of Infrastructure, supported the proposal contained in the Bill and proposed additional amendments for inclusion in the Bill as follows:


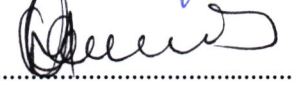


- (a) A reduction of the Membership of the Kenya Roads Board from the current thirteen members to nine members to align the Board with the corporate governance principles contained in the *Mwongozo* Code; and
- (b) Exemption of interest income earned by the Kenya Roads Board, Kenya National Highways Authority, Kenya Urban Roads Authority and the Kenya Rural Roads Authority from taxation provided that the interest income is wholly used in the exercise of the respective mandates of the institutions.

The Committee agreed with the views of the State Department on the reconstitution of the Board Membership and the need to exempt the interest income earned by roads agencies from taxation.

MIN NO. TPWH 168/2022: SUBMISSIONS FROM THE INSTITUTE OF ENGINEERS OF KENYA ON THE KENYA ROADS BOARD (AMENDMENT) BILL (NA BILLS NO. 13 OF 2022)

**Adoption of the Committee Report on Consideration of
The Kenya Roads Board (Amendment) Bill (NA Bill No. 13 of 2022)**

We, the Members of the Departmental Committee on Transport, Public Works and Housing, have, pursuant to Standing Order 199, adopted this Report on consideration of the Kenya Roads Board (Amendment) Bill (NA Bill No. 13 of 2022) and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

1. Hon. David Pkosing, CBS – Chairperson 
2. Hon. Mercy Wanjiku Gakuya – Vice Chairperson 
3. Hon. Abdul Rahim Dawood
4. Hon. David Njuguna Kiaraho
5. Hon. Johnson Many Naicca
6. Hon. Moses Malulu Injendi
7. Hon. Omar Mwinyi Shimbwa
8. Hon. Peris Pesi Tobiko, CBS
9. Hon. Samuel Arama
10. Hon. Ahmed Abdisalan Ibrahim
11. Hon. Ahmed Bashane Gaal
12. Hon. Ali Wario Guyo 
13. Hon. Dominic Kipkoech Koskei
14. Hon. George Aladwa Omwera
15. Hon. Gideon Mutemi Mulyungi
16. Hon. Kulow Maalim Hassan
17. Hon. Janet Wanyama Nangabo
18. Hon. Shadrack John Mose 
19. Hon. Tom Mboya Odege

The Institution of Engineers of Kenya submitted that reducing the funds of the Board available for construction and maintenance of roads by fifty percent (50%) may have a significantly negative impact on the capacity of the Roads Agencies to maintain the existing road network and will result in a significant proportion of roads not being maintained as required leading to accelerated deterioration. It was their proposal that the proportion of the funds to be set aside for the purposes of securing additional financing under Section 32A be limited to twenty percent (20%).

They further proposed that any additional funding secured under Section 32A be utilized as currently stipulated in the proposed new section 6 (2) (d) to reduce the maintenance funding deficit. IEK also proposed additional provisions in the Bill to amend the Act to:

- (a) allocate a maximum of one percent (1%) of the funds administered by the Board to the Engineers Board of Kenya (EBK) for capacity building and training programs including the Graduate Engineer Internship Program (GEIP); and
- (b) amend the qualifications required that for a person to be the Director General of the Kenya Roads Board, he or she must be a registered Civil Engineer with a master's degree and at least fifteen years post-registration experience in highway engineering and at least ten years managerial experience in the roads sector.

The Committee was of the view that the proposal for allocation of monies to fund the programs of the Engineers Board of Kenya should be deferred for in-depth consideration by the next Parliament. Additionally, with regard to amending the qualification for appointment as the Director-General of the Kenya Roads Board, the Committee was of the view that such an amendment would unduly restrict the number and variety of candidates available for consideration for appointment.

MIN No. TPWH 169/2022: ADJOURNMENT

There being no other business, the sitting was adjourned at thirty-five minutes past one o'clock. Next meeting to be held on notice.

Signed..... 

(Chairperson)

Date.....

MINUTES OF THE THIRTY FOURTH (34TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON THURSDAY, 2ND JUNE 2022 AT 10:00 AM AT THE BOARDROOM ON 4TH FLOOR, CONTINENTAL HOUSE, WITHIN PARLIAMENT BUILDINGS, NAIROBI

MEMBERS PRESENT

1. Hon. David L. Pkosing, C.B.S., M.P. – *Chairperson*
2. Hon. Mercy Wanjiku Gakuya, M.P. – *Vice Chairperson*
3. Hon. Abdul Rahim Dawood, M.P.
4. Hon. David Njuguna Kiaraho, M.P.
5. Hon. Omar Mwinyi Shimbwa, M.P.
6. Hon. Gideon Mulyungi, M.P.
7. Hon. Peris Pesi Tobiko, C.B.S., M.P.
8. Hon. Samuel Arama, M.P.
9. Hon. Ali Wario Guyo, M.P.
10. Hon. Dominic Koskei, M.P.
11. Hon. Janet Nangabo, M.P.
12. Hon. Kulow Maalim Hassan, M.P.
13. Hon. Tom Mboya Odege, M.P.
14. Hon. Shadrack John Mose, M.P.

MEMBERS ABSENT WITH APOLOGY

15. Hon. Johnson Many Naicca, M.P.
16. Hon. Ahmed Abdisalan Ibrahim, M.P.
17. Hon. Ahmed Bashane Gaal, M.P.
18. Hon. George Aladwa Omwera, M.P.
19. Hon. Moses Malulu Injendi, M.P.

SECRETARIAT

- | | | |
|-----------------------------|---|------------------------|
| 1. Ms. Tungo Chelagat Aaron | - | Senior Clerk Assistant |
| 2. Mr. Ahmed Salim Abdalla | - | Clerk Assistant II |
| 3. Mr. Ronald Walala | - | Legal Counsel |
| 4. Mr. Job Owaga | - | Audio Officer |
| 5. Mr. Moses Kariuki | - | Serjeant-at-Arms |

MIN No. TPWH 169/2022: PRELIMINARIES

The Chairperson called the meeting to order at ten o'clock followed by a word of prayer. The Chairman informed the Honorable Members that the Committee was meeting stakeholders to consider the Report on the Kenya Roads Board (Amendment) Bill, 2022 and the Committee's Exit Report for the 12th Parliament.

The agenda of the meeting was therefore adopted after being proposed by the Hon. Tom Odege, MP and seconded by the Hon. Ali Wario, MP.

MIN No. TPWH 170/2022:

CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS

Minutes of the 33rd sitting which was held on 31st May 2022 were confirmed as a true record of the proceedings, after having been proposed by the Hon. Dominic Koskei, MP, and seconded by Hon. Tom Odege, MP.

MIN NO. TPWH 171/2022:

CONSIDERATION AND ADOPTION OF THE REPORT ON THE KENYA ROADS BOARD (AMENDMENT) BILL, 2022 (NA BILLS NO. 13)

The Committee noted that the following stakeholders submitted written memoranda to the Committee, in response to the said call through the advertisements of 13th May, 2022:

- a) The State Department of Infrastructure;
- b) The Institution of Engineers of Kenya; and
- c) Mr. David Muriuki Kageenu.

The Committee further noted that it also met and discussed the Bill with stakeholders on Tuesday, 31st May, 2022, within Parliament Buildings.

The Committee noted that one Mr. David Muriuki Kageenu opposed the Bill to the extent that it proposes to allocate fifty per cent of the funds managed by the Kenya Roads Board to borrowing functions. He noted that whatever the Government intends to do can be done with the finances that they are already collecting and that there is need to practice sustainable infrastructure development. The Committee noted that the proposed use of a portion of already collected funds as collateral for borrowing shall ensure that the debt is sustainably managed.

The Committee therefore **observed** that:

- (a) There is need to reconstitute the Membership of the Kenya Roads Board to enhance its corporate governance in line with the principles contained in the *Mwongozo* Code; and
- (b) The taxation of interest income earned by the Kenya Roads Board, Kenya National Highways Authority, Kenya Urban Roads Authority and the Kenya Rural Roads Authority reduces the capability of the agencies from fully executing their mandate. It would be more beneficial for the country if such income was exempted from taxation on condition that it is wholly used in the exercise of the respective mandates of the roads' agencies.

The Committee having considered the Kenya Roads Board Amendment Bill, 2022 (National Assembly Bill No. 13 of 2022), stakeholders' comments on the Bill and the above observations, **recommended** to the House that the Bill be approved with amendments to clause 3 and clause 4 of the Bill.

The report was adopted by the Committee, having been proposed by Hon. Shadrack Mose, MP, and seconded by Hon. Mercy Gakuya, MP.

MIN NO. TPWH 172/2022:

**CONSIDERATION AND ADOPTION OF THE
COMMITTEE'S EXIT REPORT FOR THE 12TH
PARLIAMENT**

The Committee went through the draft Exit Report for the Committee's term during the 12th Parliament (from 2017 to 2022). The Committee adopted the report, confirming the true record of the activities as undertaken by the Committee.

Proposal for adoption of the Committee's Exit Report was made by Hon. Tom Odege and seconded by Hon. Samuel Arama.

MIN NO. TPWH 173/2022:

ANY OTHER BUSINESS

The Committee noted that there was an invitation from the State Department for Shipping and Maritime to a sensitization retreat on a number of proposed Bills and regulations, from 2nd to 5th June 2022. The Committee further noted that the venue was changed from Mombasa to Machakos.

MIN No. TPWH 174/2022:

ADJOURNMENT

There being no other business, the sitting was adjourned at twenty minutes past eleven o'clock. Next meeting to be held on 3rd June 2022 at a venue to be confirmed by the Office of the Clerk.

Signed.....



(Chairperson)

Date.....



**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN
DEVELOPMENT AND PUBLIC WORKS
STATE DEPARTMENT OF INFRASTRUCTURE**

Office of the Principal Secretary

Telephone: (020) 2723232
Fax: (020) 2719658
Email: ps@infrastructure.go.ke
Website: www.transport.go.ke

Works Building
NGONG ROAD
P.O. Box 30260 - 00100
NAIROBI

Ref: MOTIHU/I/A35.38 VOL.V

30th May, 2022

Michael Sialai, CBS
Clerk of the National Assembly
Parliament Buildings
NAIROBI

Dear *SW*,

**RE: PROPOSED AMENDMENTS TO THE KENYA ROADS BOARD ACT,
1999, INCOME TAX ACT, 2012 AND THE FIRST SCHEDULE TO THE
INCOME TAX ACT, 2012.**

Reference is made to the proposed amendments to The Statute Law (Miscellaneous Amendments) Bill 2022, The Kenya Roads Board (Amendment Bill) 2022 and letter Ref: MOTIHU/I/A.35.38 VOLV dated 22nd April, 2022 (*Copy attached*).

The following amendments have been presented to the National Assembly;

a) *The Statute Law (Miscellaneous Amendments) Bill, 2022*

It is proposed to reconstitute the Kenya Roads Board from its current 13 members to 9 members to align with Mwongozo best practice.

The Ministry supports this amendment.

b) *The Kenya Roads Board (Amendment Bill) 2022*

It is proposed to amend Section 6 of the Kenya Roads Board Act, 1999 to enable the Board to manage the Kenya Roads Fund in a manner that allows it to better finance the construction and maintenance of roads.


The Ministry supports this amendment.

The Ministry also proposed the exemption of interest income earned by the Kenya Roads Board, Kenya National Highways Authority, Kenya Urban Roads Authority, and the Kenya Rural Roads Authority from taxation provided that the interest income is wholly used in the exercise of the respective mandates of the institutions (Income Tax Act, 2012).

This is to request you to also consider the above amendment under The Statute Law (Miscellaneous Amendments) Bill 2022.

Yours

 sincerely,


Prof. Arch. Paul Maringa (PhD), CBS, F.A.A.K, MKIP
PRINCIPAL SECRETARY

Copy to: James W. Macharia, EGH
Cabinet Secretary
Ministry of Transport, Infrastructure, Housing,
Urban Development and Public Works
NAIROBI

Rashid Mohamed, MBS
Director General
Kenya Roads Board
NAIROBI

Dear Sir

PROPOSED AMENDMENTS TO THE KENYA ROADS BOARD ACT, 1999

The KRB Board of Directors is composed of 13No. members being 8No. private sector organizations and 5No. public sector institutions. The Board was formed under the KRB Act (1999), and has maintained the same representation over the years, whereas, the Road Authorities that were formed under the Roads Act (2007) have a maximum Board membership of 9No. members.

Section 1.1 of the Mwongozo Code of Governance for State Corporations also recommends that Boards of State Corporations be between seven and nine members, and the Commissions established in the Constitution of Kenya 2010, are also expected under Article 250 to consist of at least three and not more than Nine (9) Members.

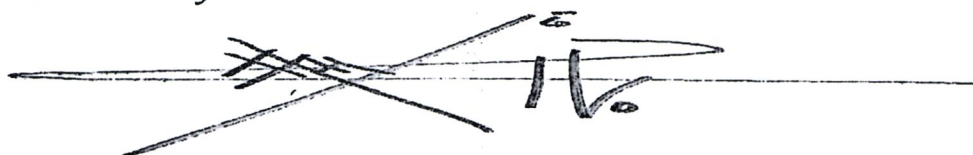
To streamline the Board membership with current governance frameworks, it is proposed that the Board of KRB be composed of 9No. members composed of 5No. members from the private sector and 4No. members from the public sector. This will require reducing the private sector numbers by three and the public sector numbers by one, through an amendment of the Kenya Roads Board Act (Section 7) as below;

Section	Current Provision (Kenya Roads Board Act, 1999)	Proposed Amendment	Memorandum of objects and reasons
7(1)(h)	h) eight other members comprising, representatives of each of the organizations specified in the First Schedule and appointed by the Minister from amongst three persons nominated by each of the organizations	<i>The Principal Act is amended in Section 7(1) (h) by deleting the first word eight and replacing therefore with the word Five</i>	To be in compliance with Section 1.1 of Mwongozo Code of Governance. The code of Governance for State Corporations, and other circulars from the Public Service Commission recommend a Board membership of between Seven (7) and Nine (9)
Section 7(1), e,f,g	(g) the Permanent Secretary in the Ministry for the time being responsible for matters relating to Transport and Communications or his designated alternate, not being below the level of Deputy Secretary;	<i>The Principal Act is amended in Section 7(h) by deleting Sub Section (1) Paragraph g</i>	

Attached please find an extract of the Kenya Roads Board Act (1999) pertaining to the composition of the Board.

This is to request consideration of the amendments of Section 7(1) of 5 the Kenya Roads Board Act, 1999 through the Finance Bill, 2021.

Yours Sincerely



Prof. Arch. Paul Maringa (PhD), CBS, F.A.A.K, MKIP
PRINCIPAL SECRETARY

Copy to: James W. Macharia, EGH
Cabinet Secretary
MOTIHUD & PW
NAIROBI

Hon. Justice (Rtd) P. Kihara Kariuki, EGH
Attorney General
Office of the Attorney General and
Department of Justice
NAIROBI



The Institution of Engineers of Kenya

Registered Office: 1st floor, Top Plaza, Kindaruma Rd,

iek@iekenya.org

+254 721 729363, +254 020 2729326

P.O Box 41346 - 00100, Nairobi, Kenya

www.iekenya.org

Our Ref: IEK/PRE/233/2022

30th May, 2022

The Clerk of the National Assembly
P. O Box 41842 - 00100
NAIROBI

Dear

RE: COMMENTS ON THE KENYA ROADS BOARD (AMMENDMENT) BILL 2022

The Institution of Engineers of Kenya (IEK) is the learned society of the engineering profession and co-operates with national and other international institutions in developing and applying engineering to the benefit of humanity. IEK has over 9,000 members drawn from engineers working in various government institutions (both national and county), consultancies, contractors, educators, designers, manufacturers, and other persons interested in engineering.

The Transportation Subcommittee of the Institution of Engineers of Kenya's Policy, Research and Advocacy (PRA) Committee seeks, as part of its work plan, "the review of legislation to align engineering practice to global best practices." As a result, the transportation Subcommittee brought this to the attention of the IEK membership and other relevant peer groups following calls for comments on the Kenya Roads Board (Amendment) bill 2022.

Institution of Engineers of Kenya has reviewed the proposed amendments and provided the following (tabulated) comments for your kind consideration.

Yours sincerely,

Eng. Erick Ohaga, CE, FIEK
President
Institution of Engineers of Kenya



PROPOSED AMENDMENTS TO KENYA ROADS BOARD ACT

KENYA ROADS BOARD (AMENDMENTS), BILL 2022

COMMENTS ON THE BILL BY THE INSTITUTION OF ENGINEERS OF KENYA

(a) General Comments

The Kenya Roads Board Amendment Bill 2022 is a timely bill aimed at enabling the Board to manage the Kenya Roads Fund in a manner that allows it to better finance the construction and maintenance of roads. A good road network is a primary enabler to achieve national, regional and global sustainable development goals envisaged under vision 2030, Africa Agenda 2063 and UN SDGs. The total length of the classified road network in Kenya is over 161,451 Km; 15% of which is paved and 85% unpaved. According to the 2018-2022 Road Sector Investment Programme (RSIP), network condition data obtained from the Roads Agencies in 2016 showed that 56% of the road network was in poor condition, 26% in fair condition and 17% in good condition. It is estimated that in order to meet the current maintenance and development needs aimed at optimizing the condition of the road network, an additional budget of 1.47 trillion is required.

Road maintenance works are largely financed by the RMLF at KShs. 18 per litre translating to about 75 Billion per annum (MOTIHUD Policy statement on sustainable road maintenance for economic growth). The 2018-2022 RSIP estimated that the amount required for maintenance work over the five year period is 445 Billion against a budget of 385 billion, the funding deficit being about 60 Billion. The required amount is now estimated as KShs. 145 Billion per year. During the 2021-2022 financial year, the estimated RMLF collection is about 69 billion against an average annual requirement of 89 Billion. This scenario underscores the urgent need to increase funding for road maintenance works and to ensure optimal utilisation of the same. Optimal utilisation of available funds can only be guaranteed by technically competent fund managers who will ensure that technically feasible, sustainable and cost effective measures are deployed. There is also urgent need to build local technical capacity through industrial training of Graduate Engineers in order to ensure that the country has sufficient numbers of Professional Engineers and Consulting Engineers to facilitate achievement of national development goals.

We support the measures aimed at raising additional funding for road maintenance as stipulated in the Policy on Sustainable Road Maintenance for Economic Growth and emphasize the need for RMLF to be enhanced and ring-fenced to reduce the funding deficit. We further propose that other funding strategies such as Public Private Partnerships, Infrastructure bonds and use of Build Operate and Transfer be deployed to reduce the funding deficit for road network development.

A handwritten signature in black ink, appearing to be 'F. O. Ochieng', is written over a horizontal line.



(b) Specific Comments

Clause	CURRENT PROVISION	PROPOSED BILL	IEK Proposal	Rationale
6 (2) (c)	<p>(2) Without prejudice to the generality of subsection (1), the Board shall— (c) manage the Fund;</p>	<p>(2) Without prejudice to the generality of subsection (1), the Board shall— (c) manage the fund and allocate monies from the Fund in the following manner-</p> <p>(i) Fifty percent of the Fund allocate in accordance with paragraph (d); and</p> <p>(ii) Fifty per cent of the Fund allocated for the purposes of section 32A (2)</p>	<p>(2) Without prejudice to the generality of subsection (1), the Board shall— (c) manage the fund and allocate monies from the Fund in the following manner-</p> <p>i) Fifty percent of the Fund allocate in accordance with paragraph (d); and</p> <p>ii) Twenty per cent of the Fund allocated for the purposes of section 32A (2)</p> <p>iii) The additional funds secured under section 32A (2) will be allocated as prescribed under section 6(2)(d)</p>	<p>There is a huge road maintenance funding deficit with the Roads Authorities increasingly finding it difficult to maintain the rapidly expanding network of both paved and unpaved roads.</p>
32A	<p>32A. Power to borrow and set aside funds to secure repayments (2) The Board may, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance, where it is necessary to meet financial demands for maintenance, development and rehabilitation of roads, set aside a portion of the Fund for purposes of securing additional funding.</p>			<p>The RMLF is inadequate and efforts to secure additional funding are timely. Reducing available funds by 50% will have a significantly negative impact on the capacity of the Roads Agencies to maintain the existing road network and will result in a significant proportion of roads not being maintained as required leading to accelerated deterioration. Delayed maintenance will result in an increase in the scope and cost of maintenance works thus negating the very objective of the Fund. We propose that not more than 20% of the RMLF be applied for the purposes of section 32A (2).</p> <p>It is also not clear how the additional funds secured under clause 2(1)(c)(ii) will be allocated. We propose that these be allocated as stipulated under clause 6 (2) (d) to reduce the maintenance funding deficit.</p>



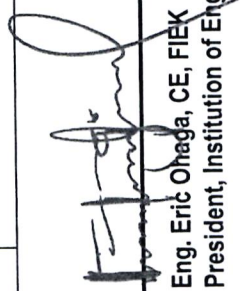
Clause	CURRENT PROVISION	PROPOSED BILL	IEK Proposal	Rationale
6 (2) (d)	(d) based on a five year road investment programme approved by the Minister and the Minister for Finance, determine the allocation of financial resources from the fuel levy required by road agencies for the maintenance, rehabilitation and development of the road network to ensure that the allocation of funds is pegged to specific categories of roads and that not less than—		OK	
6 (2) (d) (i)	(i) twenty-two percent , which shall be deposited into a special bank account to be called Constituency Roads Fund Account to be maintained by every Constituency of the monies from the fuel levy is allocated equally to all constituencies in the country to be administered by the Rural Roads Authority ;	(i) twenty-two percent , which shall be deposited into a special bank account to be called Constituency Roads Fund Account to be maintained by every Constituency, of the allocated funds is allocated equally to all constituencies in the country to be administered by the Rural Roads Authority ;	OK	
6 (2) (d) (ii)	ten percent of the monies from the Fund is allocated for the maintenance or development of link roads between constituencies and to serve as Government counterpart funds in works on rural roads, to be administered by the Kenya Rural Roads Authority and that the said percentage shall be equally distributed to the Constituencies where Kenya Rural Roads Authority has the mandate;	ten percent of the allocated funds is allocated for the maintenance or development of link roads between constituencies and to serve as Government counterpart funds in funding works on rural roads, to be administered by the Kenya Rural Roads Authority and that the said percentage shall be equally distributed to the Constituencies where Kenya Rural Roads Authority has the mandate;	OK	



Clause	CURRENT PROVISION	PROPOSED BILL	IEK Proposal	Rationale
6 (2) (d)(iii)	forty percent of the monies from the fuel levy is allocated in respect of the national roads to be administered by the National Highways Authority ;	forty percent of the allocated funds is allocated in respect of the national roads to be administered by the National Highways Authority ;	OK	
6 (2) (d)(iv)	fifteen percent of the monies from the fuel levy is allocated in respect of the urban roads to be administered by the Urban Roads Authority ; and	fifteen percent of the allocated funds is allocated in respect of the urban roads to be administered by the Urban Roads Authority ; and	OK	
6 (2) (d)(v)	one percent of the monies from the fuel levy is allocated in respect of roads in national parks and reserves to be administered by the Kenya Wildlife Service ; and	one percent of the allocated funds is allocated in respect of roads in national parks and reserves to be administered by the Kenya Wildlife Service ; and	OK	
6 (2) (d)(vi)	a maximum of two percent of the monies from the Fund is allocated in respect of the recurrent expenditure of the Board under section 31(5);	a maximum of two percent of the allocated funds is allocated in respect of the recurrent expenditure of the Board under section 31(5);	OK	
6 (2) (d)(vii)	(New clause)	(New clause)	a maximum of one percent of the allocated funds is allocated in respect of the Engineers Board of Kenya (EBK) capacity building and training programs including the Graduate Engineer Internship Program (GEIP);	Out of the total number of 22,181 Engineers across all cadres, 19291 (87%) are Graduate Engineers at various levels of industrial training. Only 2890 are Professional Engineers and Consulting Engineers duly licensed to provide Engineering services. Considering a population of about 50 million people, the ratio of Engineers per capita is 1:17301, falling far short of the recommended UNESCO ratio of 1:5000. There is urgent need to provide additional funds to support the EBK GEIP to increase the transition rate in order for the Country to have sufficient numbers of Engineers to drive its development. Agenda.



Clause	CURRENT PROVISION	PROPOSED BILL	IEK Proposal	Rationale
12(2)	<p>(2) A person shall be qualified for appointment as the Director General if that person—</p> <p>(a) holds a degree in finance, accounting, law or engineering from a university recognised in Kenya; (b) has knowledge and at least ten years' experience in a relevant field; (c) has served in a senior management position for a period of at least five years; and (d) satisfies the requirements of Chapter Six of the Constitution</p>		<p>A person shall be qualified for appointment as Director-General if such person—</p> <p>(a) holds a Bachelor's degree in Civil Engineering and a relevant Masters Degree from a university recognised in Kenya.</p> <p>(b) Is registered with the Engineers Board of Kenya in the Category of Professional Engineer or higher.</p> <p>(c) Has at least 15 years' experience with at least ten years post registration experience in highway engineering</p> <p>(d) At least ten years' experience in a managerial position within the roads sector; and</p> <p>(e) Satisfies the requirements of Chapter Six of the Constitution.</p>	<p>Maintenance of the existing road network, valued at about KShs 3.5 Trillion, requires a technically competent professional with immense experience to ensure optimal utilisation of available funds. The DG should be capable of independently understanding the technical interventions proposed in the RSIP in order to provide appropriate technical advice to the Board. He should also be capable of taking professional responsibility for his decisions. Registration with EBK and 15 years post registration experience in Highway Engineering will ensure that the DG has requisite competence.</p>


Eng. Eric Ohaga, CE, FIEK
President, Institution of Engineers of Kenya

David Muriuki Kageenu

Nairobi, Kenya

0716-238252

davidkageenu@rocketmail.com

P.O. Box 4417 – 00100

31st May 2022

Mr. Michael Sialai, EBS

Clerk of the National Assembly

Hon clerk,

**RE: REPRESENTATIONS ON THE KENYA ROADS BOARD (AMENDMENT) BILL
(NATIONAL ASSEMBLY BIL NO 13 OF 2022)**

Pursuant to the invitation for public participation and submission of memoranda against The Kenya Roads Board (Amendment) Bill (National Assembly Bill No. 13 of 2022) that was introduced to the National Assembly by way of First Reading, I hereby submit my amendments for your consideration as per the provisions of Article 119 of the Constitution.

I have also submitted my arguments supporting the proposed amendments.

Best regards,

David Muriuki Kageenu

Private Citizen



1. I reject clause 2 section A (ii) of the proposed amendment that is proposing to allocate fifty per cent of the Fund to borrowing functions of the board.

MEMORANDUM OF OBJECTS AND REASONS

I am concerned with the levels of debt that the Kenyan government has acquired as it pushes for infrastructure development. However, I do not believe this is sustainable and therefore we need to begin living within our means. The medium-term plan by the Government talks of having sustainable debt levels and therefore allowing for additional avenues for borrowing that is already starting to drain the economy is not a good plan. I believe that the road network development that the Government intends to do can be done with the finances that they are already collecting especially if they manage their recurrent expenditure and allocate more funds into development. As we move into the fourth phase of the medium-term plan (2023 - 2027) let us practice sustainable infrastructure development by using the resources we already have.





REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – SIXTH SESSION

In the Matter of Article 118(1) (b) of the Constitution
And
In the Matter of Consideration by the National Assembly of:-

1. The Kenya Roads Board (Amendment) Bill (*National Assembly Bill No. 13 of 2022*)
2. The Supreme Court (Amendment) Bill, (*National Assembly Bill No. 15 of 2022*)
3. The Kenya Revenue Authority (Amendment) Bill (*National Assembly Bill No. 24 of 2022*)
4. The Land Control Bill (*National Assembly Bill No. 07 of 2022*)
5. The Valuers Bill (*National Assembly Bill No. 18 of 2022*)
6. The Parliamentary Pensions (Amendment) Bill (*National Assembly Bill No. 19 of 2022*)
7. The National Rating Bill (*National Assembly Bill No. 10 of 2022*)
8. The Public Finance Management (Amendment) Bill (*National Assembly Bill No. 16 of 2022*)
9. The Public Finance Management (Amendment) Bill (*National Assembly Bill No. 21 of 2022*)

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Article 118(1) (b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.

The Kenya Roads Board (Amendment) Bill (*National Assembly Bill No. 13 of 2022*) is sponsored by **Hon. David Pkosing, M.P** and seeks to amend Section 6 of the Kenya Roads Board Act, 2009 to enable the Board to manage the Kenya Roads Fund in a manner that allows it to better finance the construction and maintenance of roads.

The Supreme Court (Amendment) Bill (*National Assembly Bill No. 15 of 2022*) is sponsored by the **Leader of Majority Party, Hon. Amos Kimunya, M.P.** and seeks to amend the Supreme Court Act, 2011 in order to align it with the current practices of the Court and to improve the Court's efficiency in the discharge of its duties. A number of Sections of the Act have been declared unconstitutional, hence the need to have the same reflected in the Act.

The Kenya Revenue Authority (Amendment) Bill (*National Assembly Bill No. 24 of 2022*) is sponsored by the **Leader of Majority Party, Hon. Amos Kimunya, M.P.** and seeks to amend the Kenya Revenue Authority Act, 1995 by changing the name "Kenya Revenue

Authority” to “Kenya Revenue Service”. The Bill also seeks to amend other statutes which have reference to the name “Kenya Revenue Authority” accordingly.

The Land Control Bill (National Assembly Bill No. 07 of 2022) is sponsored by **Hon. Wilberforce Oundo, M.P.** and seeks to repeal and replace the Land Control Act, Cap. 302 in order to align the law governing dealings in agricultural land with the provisions of the Constitution of Kenya 2010, the Environment and Land Court Act, 2011, the Land Registration Act, 2012 and the Land Act, 2012.

The Valuers Bill (National Assembly Bill No. 18 of 2022) is sponsored by **Hon. Michael Muchira, M.P.** and seeks to regulate the practice of valuation in Kenya. The Bill also seeks to repeal and replace the Valuers Act, Cap. 532 and align its provisions with the Constitution of Kenya, 2010 and the current practices in valuation.

The Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 19 of 2022) is sponsored by **Hon. Andrew Mwadime, M.P.** and seeks to amend the Parliamentary Pension Act, Cap 196 to increase the amount of pension due to former Members of Parliament who served between 1st July 1984 and 1st January 2001 to a minimum sum of Kenya Shillings One Hundred Thousand. This is in light of the fact that despite serving the nation, some former Members of Parliament are languishing in poverty and there is need to take care of their welfare

The National Rating Bill, (National Assembly Bill No. 10 of 2022) is sponsored by the **Leader of Majority Party, Hon. Amos Kimunya, M.P.** and seeks to provide for enhancement, certainty, uniformity and fairness in levying of property rates by the counties. The Bill further seeks to provide a buoyant source of revenue for County Governments.

The Public Finance Management (Amendment) Bill (National Assembly Bill No. 16 of 2022) is sponsored by **Hon. Joseph Oyula, M.P.** and seeks to provide for establishment of the Public Sector Accounting Board as a body corporate. Further, the Bill provides for the establishment and implementation of a framework for accrual accounting in the Government.

The Public Finance Management (Amendment) Bill (National Assembly Bill No. 21 of 2022) is sponsored by the **Leader of Majority Party, Hon. Amos Kimunya, M.P.** and seeks to amend the Public Finance Management Act, 2021 to operationalize the public debt and borrowing with regard to framework for monitoring the public debt to align it with the requirements of Article 214(2) of the Constitution which defines “public debt” to mean all financial obligations attendant to loans raised or guaranteed by the national government.

The Bills were Read a First Time on **Tuesday, 10th and Wednesday 11th May, 2022** and pursuant to National Assembly Standing Order 127(1) committed to various House Departmental Committees as set out in the schedule hereunder:

SCHEDULE

No	Bill	Committee
1.	The Kenya Roads Board (Amendment) Bill (National Assembly Bill No. 13 of 2022)	Transport, Public Works and Housing
2.	The Supreme Court (Amendment) Bill (National Assembly Bill No. 15 of 2022)	Justice and Legal Affairs
3.	The Kenya Revenue Authority (Amendment) Bill (National Assembly Bill No. 24 of 2022)	

4	The Public Finance Management (Amendment) Bill (<i>National Assembly Bill No. 16 of 2022</i>)	Finance and National Planning
5	The Public Finance Management (Amendment) Bill (<i>National Assembly Bill No. 21 of 2022</i>)	
6	The Parliamentary Pensions (Amendment) Bill (<i>National Assembly Bill No. 19 of 2022</i>)	
7.	The Land Control Bill (<i>National Assembly Bill No. 07 of 2022</i>)	Lands
8.	The Valuers Bill (<i>National Assembly Bill No. 18 of 2022</i>)	
9.	The National Rating Bill (<i>National Assembly Bill No. 10 of 2022</i>)	

Now Therefore in compliance with Article 118 (1) (b) of the Constitution of Kenya and National Assembly Standing Order 127 (3) the Committees hereby invite members of the public and relevant stakeholders to submit memoranda on the Bills. Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda should be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to clerk@parliament.go.ke; to be received **on or before Tuesday 31st May, 2022 at 5.00 p.m.**

SERAH M. KIOKO, MBS
DEPUTY CLERK OF THE NATIONAL ASSEMBLY

“For the welfare of society and the just Government of the people”

SPECIAL ISSUE

Kenya Gazette Supplement No. 44 (National Assembly Bills No. 13)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2022

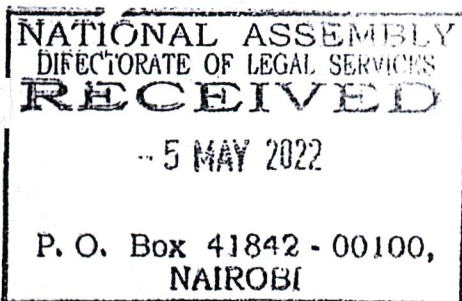
NAIROBI, 18th March, 2022

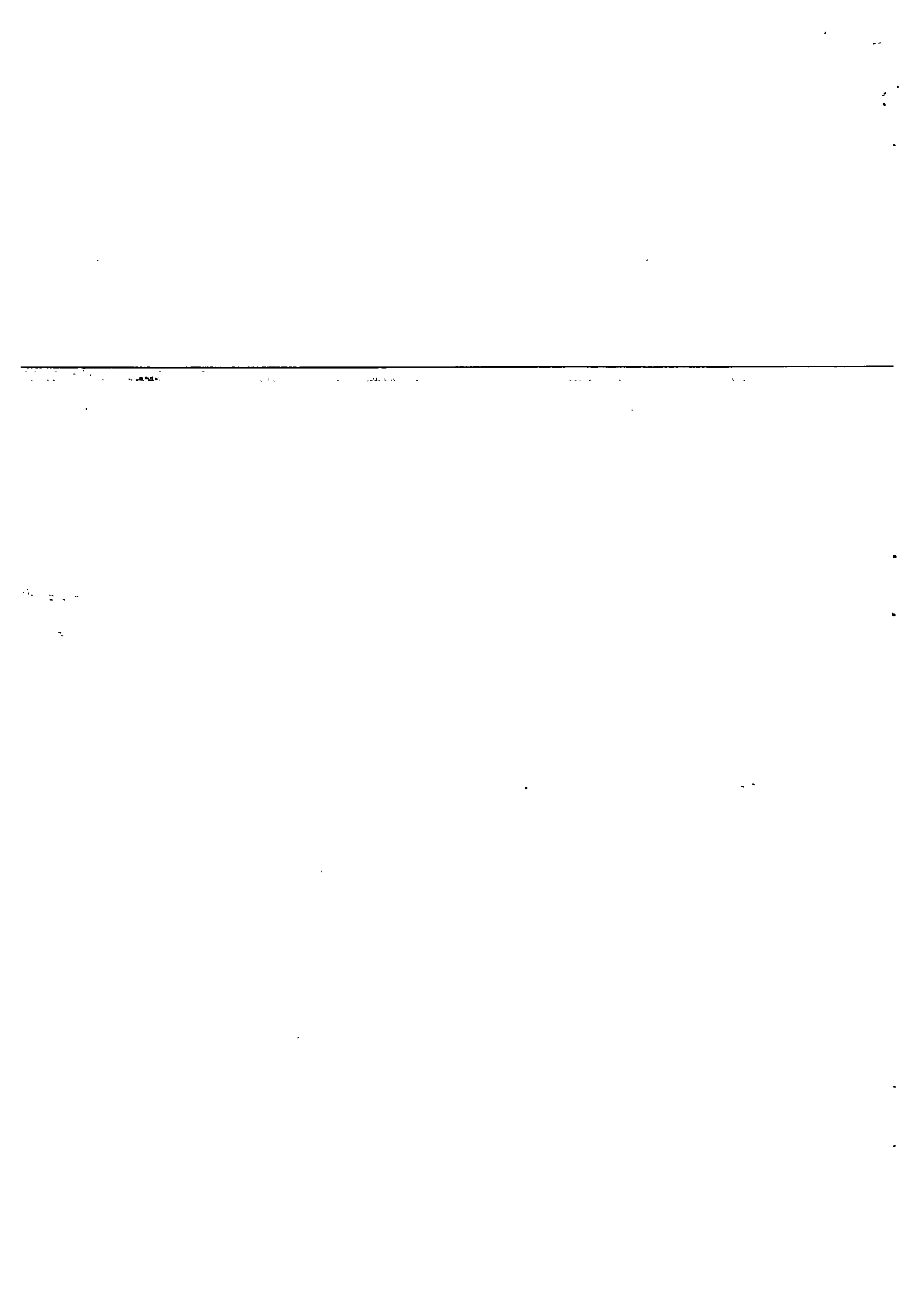
CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Kenya Roads Board (Amendment) Bill, 2022413





**THE KENYA ROADS BOARD (AMENDMENT)
BILL, 2022**

A Bill for

AN ACT of Parliament to amend the Kenya Roads Board Act, 2009 and for connected purposes

ENACTED by the Parliament of Kenya as follows—

1. This Act may be cited as the Kenya Roads Board (Amendment) Act, 2022.

Short title.

2. Section 6 of the Kenya Roads Board Act, 1999, is amended in subsection (2)—

Amendment of section 6 of No. 7 of 1999.

(a) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) manage the fund and allocate monies from the Fund in the following manner—

(i) fifty per cent of the Fund allocated in accordance with paragraph (d); and

(ii) fifty per cent of the Fund allocated for the purposes of section 32A (2).”

(b) in paragraph (d) (i), by deleting the words “monies from the fuel levy” appearing immediately after the words “Constituency of the” and substituting therefor the words “allocated funds”;

(c) in paragraph (d) (ii), by deleting the words “monies from the Fund” appearing immediately after the words “percent of the” and substituting therefor the words “allocated funds”;

(d) in paragraph (d) (iii), by deleting the words “monies from the fuel levy” appearing immediately after the words “percent of the” and substituting therefor the words “allocated funds”;

(e) in paragraph (d) (iv), by deleting the words “monies from the fuel levy” appearing immediately after the words “percent of the” and substituting therefor the words “allocated funds”;

(f) in paragraph (d) (v), by deleting the words “monies from the fuel levy” appearing

immediately after the words “percent of the” and substituting therefor the words “allocated funds”; and

- (g) in paragraph (d) (vi), by deleting the words “monies from the Fund” appearing immediately after the words “percent of the” and substituting therefor the words “allocated funds”.
-

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The principal object of this Bill is to amend Section 6 of the Kenya Roads Board Act, 2009 to enable the Board to manage the Kenya Roads Fund in a manner that allows it to better finance the construction and maintenance of roads.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate any legislative power or limit any fundamental rights or freedoms.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure on public funds.

Dated the 5th January, 2022.

DAVID PKOSING,
*Chairperson, Transport,
Public Works and Housing Committee.*

Section 6 of No. 7 of 2009 which it is proposed to amend—

Object and purpose of the Board

6. (1) The object and purpose for which the Board is established is to oversee the road network in Kenya and coordinate the maintenance, rehabilitation and development funded by the Fund and to advise the Minister on all matters related thereto.

(2) Without prejudice to the generality of subsection (1), the Board shall—

- (a) co-ordinate the optimal utilisation of the Fund in implementation of programmes relating to the maintenance, rehabilitation and development of the road network;
- (b) seek to achieve optimal efficiency and cost effectiveness in roadworks funded by the Fund;
- (c) manage the Fund;
- (d) based on a five year road investment programme approved by the Minister and the Minister for Finance, determine the allocation of financial resources from the fuel levy required by road agencies for the maintenance, rehabilitation and development of the road network to ensure that the allocation of funds is pegged to specific categories of roads and that not less than—
 - (i) twenty-two percent, which shall be deposited into a special bank account to be called Constituency Roads Fund Account to be maintained by every Constituency of the monies from the fuel levy is allocated equally to all constituencies in the country to be administered by the Rural Roads Authority;
 - (ii) ten percent of the monies from the Fund is allocated for the maintenance or development of link roads between constituencies and to serve as Government counterpart funds in funding works on rural roads, to be administered by the Kenya rural Roads Authority and that the said percentum shall be equally distributed to the Constituencies where Kenya Rural Roads Authority has the mandate;
 - (iii) forty percent of the monies from the fuel levy is allocated in respect of the national roads to be administered by the National Highways Authority;
 - (iv) fifteen percent of the monies from the fuel levy is allocated in respect of the urban roads to be administered by the Urban Roads Authority; and

- (iv) one percent of the monies from the fuel levy is allocated in respect of roads in national parks and reserves to be administered by the Kenya Wildlife Service, and
- (vi) a maximum of two percent of the monies from the Fund is allocated in respect of the recurrent expenditure of the Board under section 31(5);
- (e) ensure that the remainder of the monies from the Fund described in paragraph (d) shall be allocated annually by the Board with the approval of the Minister to road authorities based on an annual work programme derived from the five-year road investment programme approved by the Minister responsible for roads and the Minister for Finance;
- (f) ensure that a maximum of ten percent of all monies allocated to each road agency is utilized for development purposes by said agency;
- (g) monitor and evaluate, by means of technical, financial and performance audits, the delivery of goods, works and services funded by the Fund;
- (h) in implementing paragraph (g), pay due regard to public procurement and disposal regulations and additional guidelines issued or approved by the Minister;
- (i) recommend to the Minister appropriate levels of road user charges, fines, penalties, levies or any sums required to be collected under the Road Maintenance Levy Fund Act, 1993 and paid into the Fund;
- (j) recommend to the Minister such periodic reviews of the fuel levy as are necessary for the purposes of the Fund; and
- (k) identify, quantify and recommend to the Minister such other potential sources of revenue as may be available to the Fund for the development, rehabilitation and maintenance of roads;
- (l) the Highways Authority, the rural Roads Authority and the Urban Roads Authority may utilize such portion of monies received from the Fund for operational and administrative expenses as may be approved by the Minister on the advice of the Board:

Provided that such expenditure shall not in any year exceed, as a proportion of the projected annual expenditure of the Fund—

- (i) in the case of the Highways Authority, four percent;

- (ii) in the case of the Rural Roads Authority, five and half percent;
and
 - (iii) in the case of the Urban Roads Authority, five and a half percent.
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LAWS OF KENYA

THE KENYA ROADS BOARD ACT

NO. 7 OF 1999

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KENYA ROADS BOARD ACT
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SCHEDULES

NO. 7 OF 1999

KENYA ROADS BOARD ACT

[Date of assent: 6th January, 2000.]

[Date of commencement: 1st July, 2000.]

AN ACT of Parliament to provide for the establishment, powers and functions of the Kenya Roads Board and for connected purposes

[Act No. 7 of 1999, Act No. 15 of 2003, Legal Notice 52 of 2003, Act No. 3 of 2005, Act No. 2 of 2007, Act No. 8 of 2009, Act No. 18 of 2018, Act No. 26 of 2019, Act No. 20 of 2020.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Kenya Roads Board Act, 1999.

2. Interpretation

In this Act, unless the context otherwise requires—

"Board" means the Kenya Roads Board established by section 4;

"District Roads Committee" means a District Roads Committee established under section 17;

"fuel levy" means the road maintenance fuel levy imposed under section 3 of the Road Maintenance Levy Fund Act, 1993 (No. 9 of 1993);

"Fund" means the Kenya Roads Board Fund established by section 30;

"Highways Authority" means the Kenya National Highways Authority established under the Kenya Roads Act, 2007;

"Minister" means the Minister for the time being responsible for matters relating to roads;

"road agency" means any organization or body specified in the Third Schedule, with responsibility for defined categories of roads;

"Road maintenance Levy Fund" means the Fund established by section 7 of the Road Maintenance Levy Fund Act, 1993;

"road network" means the entire road network in Kenya, whether classified or unclassified, of regional or local importance, public or private, adopted or unadopted, or otherwise howsoever described;

"Rural Roads Authority" means the Kenya Rural Roads Authority established under the Kenya Roads Act, 2007;

"Urban Roads Authority" means the Kenya Urban Roads Authority established under the Kenya Roads Act, 2007.

[Act No. 2 of 2007, 5th Sch.]

3. Application

The provisions of this Act shall apply, as more specifically provided in the Act, to the management of the entire road network in Kenya.

PART II – ESTABLISHMENT, POWERS AND
FUNCTIONS OF THE KENYA ROADS BOARD

4. Establishment and incorporation of the Kenya Roads Board

- (1) There is established a Board to be known as the Kenya Roads Board.
- (2) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—
- (a) suing and being sued;
 - (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; and
 - (c) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.

5. Headquarters

The Headquarters of the Board shall be in Nairobi.

6. Object and purpose of the Board

- (1) The object and purpose for which the Board is established is to oversee the road network in Kenya and coordinate the maintenance, rehabilitation and development funded by the Fund and to advise the Minister on all matters related thereto.
- (2) Without prejudice to the generality of subsection (1), the Board shall—
- (a) co-ordinate the optimal utilisation of the Fund in implementation of programmes relating to the maintenance, rehabilitation and development of the road network;
 - (b) seek to achieve optimal efficiency and cost effectiveness in roadworks funded by the Fund;
 - (c) manage the Fund;
 - (d) based on a five year road investment programme approved by the Minister and the Minister for Finance, determine the allocation of financial resources from the fuel levy required by road agencies for the maintenance, rehabilitation and development of the road network to ensure that the allocation of funds is pegged to specific categories of roads and that not less than—
 - (i) twenty-two percent, which shall be deposited into a special bank account to be called Constituency Roads Fund Account to be maintained by every Constituency of the monies from the fuel levy is allocated equally to all constituencies in the country to be administered by the Rural Roads Authority;
 - (ii) ten percent of the monies from the Fund is allocated for the maintenance or development of link roads between constituencies and to serve as Government counterpart funds in funding works on rural roads, to be administered by the Kenya Rural Roads Authority and that the said percentum shall be equally distributed to the Constituencies where Kenya Rural Roads Authority has the mandate;

Kenya Roads Board

- (iii) forty percent of the monies from the fuel levy is allocated in respect of the national roads to be administered by the National Highways Authority;
 - (iv) fifteen percent of the monies from the fuel levy is allocated in respect of the urban roads to be administered by the Urban Roads Authority; and
 - (v) one percent of the monies from the fuel levy is allocated in respect of roads in national parks and reserves to be administered by the Kenya Wildlife Service; and
 - (vi) a maximum of two percent of the monies from the Fund is allocated in respect of the recurrent expenditure of the Board under section 31(5);
- (e) ensure that the remainder of the monies from the Fund described in paragraph (d) shall be allocated annually by the Board with the approval of the Minister to road authorities based on an annual work programme derived from the five-year road investment programme approved by the Minister responsible for roads and the Minister for Finance;
 - (f) ensure that a maximum of ten percent of all monies allocated to each road agency is utilized for development purposes by the said agency;
 - (g) monitor and evaluate, by means of technical, financial and performance audits, the delivery of goods, works and services funded by the Fund;
 - (h) in implementing paragraph (g), pay due regard to public procurement and disposal regulations and additional guidelines issued or approved by the Minister;
 - (i) recommend to the Minister appropriate levels of road user charges, fines, penalties, levies or any sums required to be collected under the Road Maintenance Levy Fund Act, 1993 and paid into the Fund;
 - (j) recommend to the Minister such periodic reviews of the fuel levy as are necessary for the purposes of the Fund;
 - (k) identify, quantify and recommend to the Minister such other potential sources of revenue as may be available to the Fund for the development, rehabilitation and maintenance of roads; and
 - (l) The Highways Authority, the Rural Roads Authority and the Urban Roads Authority may utilize such portion of monies received from the Fund for operational and administrative expenses as may be approved by the Minister on the advice of the Board:

Provided that such expenditure shall not in any year exceed, as a proportion of the projected annual expenditure of the Fund—

- (i) in the case of the Highways Authority, four percent;
- (ii) in the case of the Rural Roads Authority, five and half percent; and
- (iii) in the case of the Urban Roads Authority, five and a half percent.

[Act No. 3 of 2005, 4th Sch., Act No. 2 of 2007, 5th Sch., Act No. 8 of 2009, s. 74, Act No. 26 of 2019, s. 2.]

7. Membership of the Board

- (1) The Board shall consist of—

- (a) a non-executive chairman to be appointed by the President from among the members appointed under paragraph (h);
- (b) the Director General whose position shall be filled through public advertisement;
- (c) the Permanent Secretary in the Ministry for the time being responsible for matters relating to roads or his designated alternate, not being below the level of Deputy Secretary;
- (d) the Permanent Secretary of the Ministry for the time being responsible for matters relating to finance or his designated alternate, not being below the level of Deputy Secretary;
- (e) the Permanent Secretary in the Ministry for the time being responsible for local authorities or his designated alternate not below the level of Deputy Secretary;
- (f) the Permanent Secretary in the Ministry for the time being responsible for matters relating to regional co-operation or his designated alternate, not being below the level of Deputy Secretary;
- (g) the Permanent Secretary in the Ministry for the time being responsible for matters relating to transport and communications or his designated alternate, not being below the level of Deputy Secretary;
- (h) eight other members comprising, representatives of each of the organisations specified in the First Schedule and appointed by the Minister from amongst three persons nominated by each of the organisations.

(2) The Minister may, by notice in the *Gazette* amend the First Schedule.

(3) No person shall qualify for appointment as a member of the Board under paragraph (h) of subsection (1) unless such person is the holder of the Kenya Certificate of Secondary Education or an equivalent qualification and has had at least ten years practical experience.

(4) The chairman and members of the Board, other than the *ex-officio* members shall hold office for a period of three years from the date of appointment, but shall be eligible for re-appointment for one further term of a period not exceeding three years.

(5) The names of all members of the Board as first constituted and at every change in membership thereafter shall be published in the Kenya *Gazette*.

[Act No. 2 of 2007, 5th Sch., Act No. 20 of 2020, Sch.]

8. Powers of the Board

The Board shall have all powers necessary for the performance of its functions under this Act and in particular but without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) control, supervise and administer the assets of the Board in such manner as best promotes the purpose for which the Board is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Board;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;

Kenya Roads Board

- (d) enter into association with other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purpose for which the Board is established:

Provided that the Board shall only take action under this paragraph with the prior Authority of the Minister;

- (e) open a banking account or banking accounts for the funds of Board; and
- (f) invest any funds of the Board not immediately required for its purposes in the manner provided for under section 32.

[Act No. 2 of 2007, 5th Sch.]

9. Conduct of business and affairs of the Board

(1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Second Schedule.

(2) Except as provided in the Second Schedule, the Board may regulate its own procedure.

10. Remuneration of Board members

The Board shall pay members of the Board such remuneration, fees or allowances for expenses as it may determine after consultation with the Minister for the time being responsible for finance.

[Act No. 2 of 2007, 5th Sch.]

11. Delegation by the Board

The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act or under any other written law.

12. Director General

(1) There shall be an Director General of the Board who shall be appointed by the Board in consultation with the Minister and whose terms and conditions of service shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time.

(2) A person shall be qualified for appointment as the Director General if that person—

- (a) holds a degree in finance, accounting, law or engineering from a university recognised in Kenya;
- (b) has knowledge and at least ten years' experience in a relevant field;
- (c) has served in a senior management position for a period of at least five years; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(3) The Director General shall—

- (a) be an *ex-officio* member of the Board but shall have no right to vote at any meeting of the Board;
- (b) be the secretary to the Board; and
- (c) subject to the directions of the Board, be responsible for the day to day management of the affairs of the Board.

(4) The Director General shall hold office for a period of five years and shall be eligible for re—appointment for one further term of five years.

[Act No. 18 of 2018, Sch., Act No. 20 of 2020, Sch.]

13. Staff of the Board

The Board may appoint such officers or other staff as are necessary for the proper discharge of its functions under this Act or any other written law, upon such terms and conditions of service as the Board may determine.

14. The common seal of the Board

(1) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except on the resolution of the Board.

(2) The common seal of the Board when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary resolution or authorization by the Board under this section shall be presumed to have been duly given.

15. Protection from personal liability

No matter or thing done by a member of the Board or any officer, employee or agent of the Board shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Board, render the member, officer, employee or agent or any person acting on his directions personally liable to any action, claim or demand whatsoever.

16. Liability of the Board for damages

The provisions of section 20 shall not relieve the Board of the liability to pay compensation or damages to any person for an injury to him, his property or any of his interests caused by the exercise of the powers conferred on the Board by this Act or by any other written law or by the failure, whether wholly or partially, of any works.

17. Establishment, powers and functions of the Constituency roads Committee

(1) There is hereby established, for every constituency, a committee to be known as the Constituency Roads Committee.

(2) The Constituency Roads Committee shall comprise of—

- (a) four members from the respective Constituency Development Fund Committee;
- (b) the Member of Parliament for the Constituency;
- (c) a representative of the Kenya Rural Roads Authority in the region, who shall be the Secretary to the Committee;
- (d) a representative from the Ministry responsible for planning;
- (e) the respective District Commissioner or his representative; and
- (f) two members co-opted by the Committee to represent such special interests with regard to roads as the committee may determine from time to time, and who shall not have voting rights.

(3) The Constituency Roads Committee shall designate two of the members appointed under paragraph (a) of subsection (2) to be the Chairman and Vice Chairman of the Committee respectively, and any two members from subsection (2) (a) designated by the Committee and the Kenya Rural Roads Authority accountant

shall be the signatories to the Constituency Roads Fund account established by the constituency.

(4) The function of the Constituency roads Committee shall be to advise the Kenya Rural Roads Authority on the formulation of the annual roads programme and the roads to be included therein.

(5) The Constituency Roads Committee shall meet at least four times a year, and a quorum shall comprise of the chairman or vice-chairman and four other members.

[Act No. 2 of 2007, Fifth Sch., Act No. 8 of 2009, s. 75.]

17A. Establishment, powers, and functions of the Constituency Roads Tender Committee

(1) There is hereby established for every Constituency a committee to be known as the Constituency Roads Tender Committee.

(2) The Constituency Roads Tender Committee shall comprise of—

- (a) three representatives of the Constituency Development Fund Committee who are members of the Constituency Roads Committee;
- (b) a representative of the Kenya Rural Roads Authority in the Region;
- (c) the procurement officer of the Kenya Rural Roads Authority in the region, or his representative, who shall be the Secretary.

(3) The members of the Constituency Roads Tender Committee shall appoint two of the members referred to in paragraph (2)(a) to be chairman and vice-chairman of the Committee respectively:

Provided that the Chairman of the Constituency Roads Committee shall not be eligible to be appointed chairman or vice-chairman of the Constituency Roads Tender Committee.

(4) The functions of the Constituency Roads Tender Committee shall be to procure road works for the Constituency with funds allocated to the Constituency under this Act.

(5) The quorum shall be the Chairman and at least three other members of the Committee.

[Act No. 8 of 2009, s. 75.]

PART III – ALLOCATION OF FUNDS TO ROAD AGENCIES

[Act No. 2 of 2007, 5th Sch.]

18. Designation of road agencies

(1) The organisations or bodies specified in the Third Schedule are hereby designated as road agencies for the purposes of this Act.

(1A) The Minister may, by notice in the *Gazette*, amend the Third Schedule.

(2) The road agencies referred to in subsection (1) may designate sub-agencies that are acceptable to the Board.

(3) A designation under subsection (2) may be made subject to such conditions as the Board in consultation with the Minister, thinks fit, and where such conditions are made they shall be specified in the notice of designation.

(4) The functions of a road agency designated under this section shall be—

- (a) to maintain, rehabilitate and develop such categories of roads as shall be specified in the notice of designation; and

- (b) to perform such additional functions as the Minister may, from time to time assign.

[Act No. 15 of 2003, s. 59, Act No. 2 of 2007, 5th Sch.]

19. Annual Roads Programmes

- (1) The Board shall indicate to the road agencies at least a year in advance—

- (a) the amount of money likely to be available to the Board for allocation in the coming year;
- (b) the priorities of the Board in funds allocation in the coming year; and
- (c) the criteria to be applied in making allocations.

(2) Every road agency shall, at least six months before the commencement of every financial year, submit to the Board an annual roads programme in such form and containing such details as the Board shall specify, outlining a comprehensive plan of action for the development rehabilitation and maintenance of roads under the charge of the roads agency and the estimated costs of every activity required to implement the plan of action.

- (3) The road agency shall select the roads to be included in its programme.

(4) The Board shall review, individually, the annual roads programmes submitted to it by the road agencies and shall consolidate the annual roads programme into annual public roads programme which shall—

- (a) specify the amounts allocated for the maintenance, rehabilitation and development of each class of roads;
- (b) match the cost of implementing the annual roads programme with revenues collected or estimated to be collected by and within the Fund; and
- (c) identify roads requiring maintenance, rehabilitation or development in order of priority, taking into account social and economic requirements of the country or any part thereof in which roads are located.

(5) The Board shall submit to the Minister and the Minister for Finance the annual roads programme for approval and the approved programme shall form the basis of funds allocation and auditing of works by the Board and shall not be varied by the road agency without the prior written approval of the Board.

(6) Every annual roads programme funded out of any monies whether borrowed or appropriated by the National Assembly shall be managed as approved by the National Assembly.

(7) The Board shall manage the annual roads programme under sub-section (6) under the directions of the Cabinet Secretary.

[Act No. 26 of 2019, s. 3.]

20. Allocation of funds to road agencies

The Board shall, subject to the provisions of this Act, allocate funds to road agencies for the maintenance, rehabilitation and development of the categories of roads in respect of which they are designated.

21. General duty of road agencies

In the execution of their functions under this Act, a road agency shall ensure—

- (a) development, rehabilitation and maintenance of the road network consistent with the economy and set standards;

- (b) that its operations are conducted efficiently, economically and with due regard to safety; and
- (c) that financial administration is conducted in accordance with the provisions of this Act and regulations made thereunder.

[Act No. 2 of 2007, 5th Sch.]

22. Financial year of roads agencies

The financial year of every road agency shall be the period of twelve months ending on the thirtieth June in each year.

23. Accounts and records to be kept

(1) Every road agency shall cause to be kept proper books, records and accounts of all funds provided by the Board in such format and detail as is specified by the Board.

(2) The Board shall cause to be kept proper books and other records of account, in respect of receipts and expenditures of the Fund, and costs and expenditure of the Board in accordance with accepted principles and standards of accounting.

(3) The Board may, at any time, issue directions to a road agency requiring it to maintain such books, records or information in addition to any books, records or information then already maintained by it, as the Board may consider necessary.

[Act No. 2 of 2007, 5th Sch.]

24. Collection of information by the Board

The Board shall collect such data and other information as may be necessary for the furtherance of its duties.

[Act No. 2 of 2007, 5th Sch.]

25. Furnishing of information

(1) The Board may require any road agency to furnish to it, at such time and in such manner as it may direct, such information as the Board may require for the proper discharge of its functions under the Act.

(2) Every road agency shall, within six months of the end of each financial year submit to the Board its audited accounts for that financial year.

26. Technical financial and performance audit

(1) The Board shall regularly cause a technical, financial and performance audit to be made on works, goods and services financed by the Fund by an inspector authorized by the Director General in writing, of any road agency and of those books, accounts and records relating thereto.

(2) When an audit is made under subsection (1), the road agency concerned and every officer and employee thereof shall produce and make available to the inspector, all the books, accounts, records and other documents of the road agency and such correspondence, statements and information relating to the goods, work and services financed by the Fund as the inspector may require, within thirty days.

(3) Any failure to produce any books, accounts or records and other documents, correspondence, statements, returns or other information within the period specified in the direction under subsection (2) shall constitute a failure by the road agency to perform its functions and shall render the road agency liable to the penalties prescribed under section 29:

Provided that—

- (a) the books, accounts, records and other documents shall not, in the course of the inspection, be removed from the premises at which they are produced;
- (b) the inspector may make copies of any books, accounts, records and other documents required for the purposes of his report; and
- (c) all information obtained in the course of the audit inspection shall be treated as confidential and used solely for the purposes of this Act.

(4) A person convicted of an offence under subsection (3) shall be liable to a fine of not less than one hundred thousand shillings.

(5) Where an offence under subsection (3) is a continuing offence, the person convicted shall in addition to the penalty prescribed in subsection (4) be liable to a fine of one thousand shillings for each day during which the offence continues.

[Act No. 2 of 2007, 5th Sch., Act No. 20 of 2020, Sch.]

27. Powers of the inspector

(1) An inspector may, by notice in writing, require any person who is or has at any time been an officer, employee, agent, accountant or auditor of the road agency being inspected to—

- (a) give to the inspector all reasonable assistance in connection with the audit; or
- (b) appear before the audit for examination concerning matters relevant to the inspection.

(2) A person who—

- (a) refuses or fails to comply with the requirement of an inspector which is applicable to him, to the extent to which he is able to comply with it; or
- (b) obstructs or hinders an inspector in the exercise of his powers under this Act; or
- (c) furnishes information or makes a statement which he knows to be false or misleading in any material particular; or
- (d) when appearing before an inspector for examination, makes a statement which he knows to be false or misleading in any material particular,

commits an offence.

(3) A person convicted of an offence under subsection (2) shall be liable to a fine of one hundred thousand shillings or to imprisonment for three months or to both.

(4) Where an offence under subsection (2) is a continuing offence, the person convicted shall, in addition to the penalty prescribed in subsection (3), be liable to a fine of one thousand shillings for each day during which the offence continues.

28. Inspection report

An inspector appointed under this Act shall submit his report to the Director General and the report shall draw attention to any breach of the requirements of this Act and any regulations made thereunder and any other matter revealed or discovered in the course of the inspection warranting, in the opinion of the inspector, remedial action or further investigation.

[Act No. 20 of 2020, Sch.]

29. Directions to road agency

The Director General may, by notice in the prescribed form, require any road agency inspected under this Act to comply, by such date or within such period as may be specified therein, with such directions as the Board considers necessary in connection with any matter arising out of the report made under section 27.

[Act No. 20 of 2020, Sch.]

30. Suspension of funding, etc.

- (1) The Board, with the prior approval of the Minister, may—
- (a) impose such penalties, including the suspension of funding allocations, as it may prescribe on road agencies which fail to comply with any directions issued under section 28; or
 - (b) take such remedial, supplementary or alternative measures to ensure the performance of the functions of road agencies which persistently fail to discharge their functions under this Act.

[Act No. 2 of 2007, 5th Sch.]

PART IV – FINANCIAL PROVISIONS**31. The Kenya Roads Board Fund**

(1) There is established a Fund to be known as the Kenya Roads Board Fund which shall vest in the Board.

- (2) There shall be paid into the Fund—
- (a) all proceeds from the Road Maintenance Levy Fund;
 - (b) such moneys or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law;
 - (c) such sums as may be payable to the Board pursuant to this Act or any other written law, or pursuant to any gift or trust;
 - (d) all moneys from any other source provided for or donated or lent to the Board;
 - (e) such monies as may be appropriated by the National Assembly for the development, maintenance and rehabilitation of roads.
- (2A) The National Assembly shall ensure that—
- (a) not more than ten percent of the monies appropriated under subsection (2)(e) are allocated for maintenance of roads to be administered by the Kenya Rural Roads Authority; and
 - (b) not more than eighteen percent of the monies appropriated under paragraph (a) are allocated for research and standardization, capacity building and monitoring and evaluation, to be administered by the Principal Secretary responsible for matters relating to roads.

(3) All receipts, savings and accruals for the Fund and the balance of the Fund at the end of the financial year shall be retained for the purposes for which the Fund is established.

(4) There shall be paid out of the Fund any expenditure incurred by the Board in the exercise of its powers or the performance of its functions under this Act.

(5) The Board shall with the approval of the Minister, set a ceiling of the money which in any one year may be spent on recurrent expenditure which shall not exceed 3% of the total collections in that year.

[Act No. 26 of 2019, s. 4.]

32. Advances to the Board

(1) The Board shall ensure that in any financial year expenditure and commitments from the Fund shall not exceed the annual income of the Fund together with any surplus income brought forward from a previous year.

(2) If, in exceptional circumstances, the income from the Fund or other funds together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Board and the Fund, the Minister of Finance may, with the approval of Parliament, make advances to the Board and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister for Finance may determine, provided that any such advance shall be repaid from the income of the Fund.

32A. Power to borrow and set aside funds to secure repayments

(1) The Board may, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance, borrow such monies as may be required for the proper discharge of its functions under this Act.

(2) The Board may, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance, where it is necessary to meet financial demands for maintenance, development and rehabilitation of roads, set aside a portion of the Fund for purposes of securing additional funding.

(3) The Cabinet Secretary shall make regulations for the better carrying out of this section.

[Act No. 26 of 2019, s. 5.]

33. Investment of funds

(1) The Board may, with the consent of the Minister and the Minister for Finance

- (a) invest any of its surplus funds in Government securities;
- (b) place on deposit with any banks quoted on an approved securities exchange in Kenya as it may determine, any moneys not immediately required for the purposes of the Board.

(2) In this section, "**approved securities exchange**" means a securities exchange approved under the Capital Markets Authority Act (Cap. 485A).

[Act No. 2 of 2007, 5th Sch.]

34. Financial year

The financial year of the Board shall be the period of twelve months ending on the thirtieth June in each year.

35. Annual estimates

(1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Board for the financial year and in particular, the estimates shall provide for—

- (a) moneys allocated to road agencies under section 19;
- (b) the payment of the salaries, allowances and other charges in respect of the staff of the Board;
- (c) the payment of pensions, gratuities and other charges in respect of the staff of the Board;
- (d) the proper maintenance of the buildings and grounds of the Board; and
- (e) the maintenance, repair and replacement of the equipment and other property of the Board.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to Parliament through the Minister for approval and thereafter, the Board shall not increase or decrease the annual estimates.

36. Accounts and audit

(1) The Board shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Board.

(2) Within a period of four months from the end of each financial year, the Board shall submit to the Controller and Auditor-General the accounts of the Board together with—

- (a) a statement of the income and expenditure of the Board during that year; and
- (b) a statement of the assets and liabilities of the Board on the last day of that year.

(3) The accounts of the Board shall be audited and reported upon in accordance with Part III of the Public Audit Act.

(4) The Board shall inform and keep the public informed of its activities and operations through regular publications and such activities and operations shall be accessible to the public unless there are reasons of commercial confidentiality or security justifying exclusions.

(5) The decision of the Board to exclude information from the public shall be subject to judicial review.

[Act No. 2 of 2007, 5th Sch.]

PART V – MISCELLANEOUS PROVISIONS

37. Rules

The Board, with the approval of the Minister, may make rules generally for the better carrying out its functions under this Act.

[Act No. 3 of 2005, 4th Sch., Act No. 2 of 2007, 5th Sch.]

38. Powers of the Minister

(1) Deleted by Act No. 2 of 2007, 5th Sch.

(2) The Minister may—

- (a) give directions of a general nature to the Board relating to the execution of its functions under this Act; and

- (b) provide policy guidelines to the Board on the maintenance, rehabilitation and development of the road network.

[Act No. 2 of 2007, 5th Sch.]

39. Offences and penalties

(1) Any person who appropriates or applies or causes any other person to appropriate or apply, any proceeds or assets of the Board or the Fund otherwise than in accordance with the Act or the directions of the Board, shall be guilty of an offence and shall, upon conviction, be liable in addition to any other penalties which the Board may prescribe, to the penalties prescribed in the Penal Code (Cap. 63)

(2) In addition to the penalties referred to in subsection (1), all proceeds or assets found to have been misappropriated shall be recovered in full from a person found guilty of an offence under this section.

40. Deleted

Deleted by Act No. 2 of 2007, 5th Sch.

FIRST SCHEDULE

[Section 7(h)), L.N. 52 of 2003.]

ORGANISATIONS WHICH MAY NOMINATE REPRESENTATIVES TO BE APPOINTED MEMBERS OF THE BOARD BY THE MINISTER

1. The Institution of Engineers of Kenya.
2. The Automobile Association of Kenya.
3. The Kenya Association of Manufacturers.
4. The Institute of Surveyors of Kenya.
5. The League of Kenyan Women Voters.
6. The Kenya Association of Tour Operators.
7. The Institute of Certified Public Accountants of Kenya.
8. The Kenya Transport Association.

SECOND SCHEDULE

[Section 9, Act No. 20 of 2020, Sch.]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. Committees and co-opted advisors

(1) In order to achieve its objectives, the Board may establish such committees as it may deem appropriate to perform such functions and responsibilities as it shall determine, but all findings of such committees shall be presented to the Board for its consideration and determination.

(2) The Board shall appoint the chairman of any committee established by it from amongst its own members.

(3) The Board may at its discretion, at any time and for any length of time co-opt any person to attend any of its deliberations, but such person shall not be entitled to vote any matter at any meeting of the Board.

2. Vacation of office by Board Members

(1) The appointment of a member, other than an *ex-officio* member shall be terminated, in the case of the chairman, by the President, and in the case of any other member, by the Minister, on any of the following grounds:—

- (a) upon the expiration of the period of his appointment;
- (b) upon his death;
- (c) if he is adjudged bankrupt;
- (d) if he is sentenced for any offence against any written law to a term of imprisonment of, or exceeding, six months otherwise than as an alternative to, or in default of, the payment of a fine;
- (e) if he is convicted of an offence involving fraud, dishonesty or moral turpitude;
- (f) if he is absent, without the permission of the Board, from three successive meetings of the Board of which he has received notice;
- (g) upon notice in writing of his intention to resign his office;
- (h) if in the opinion of the Board, he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Board, or
- (j) upon the commission of an offence under this Act.

3. Meetings of the Board

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting, at such place or places in Kenya and at such time or times as the chairman may determine.

(2) An ordinary meeting of the Board shall be convened by at least fourteen days' written notice to the members by the Executive Director to the Board.

(3) The chairman may, in his discretion, and shall at the written request of at least half of the members of the Board and within seven days of such request, cause an extraordinary meeting of the Board to be summoned at such place and time as he may appoint.

(4) The quorum of any meeting of the Board shall be one half of the membership of the Board.

(5) Where there is no quorum at a meeting of the Board, or for the continuation of a meeting of the Board by reason of the exclusion of a member on account of the provisions governing disclosure of interest, the members present shall postpone consideration of the matter in question until there is a quorum.

(6) The Board may make standing orders for the regulation of its proceedings and business or the proceedings and business of any of its committees and shall inform the Minister in writing of all such standing orders.

(7) The minutes of each meeting of the Board or of a committee of the Board shall be kept by the executive secretary to the Board and shall be confirmed by the Board or the committee at the succeeding ordinary meeting and be duly signed by the chairman or the person presiding.

- (8) (a) The chairman shall preside over all meetings of the Board and in his absence, the members of the Board forming a quorum shall appoint one of their number to chair the meeting.

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- (b) A person appointed to chair a meeting of the Board under this subsection shall at that meeting exercise all the powers of the chairman.

(9) At any meeting of the Board, the decision of the Board on any matter shall be that of the majority of members present and voting and the chairman or the person presiding shall have in the event of an equality of votes, a casting vote in addition to his deliberative vote.

4. Disclosure of interest

If a member of the Board acquires any pecuniary interest direct or indirect in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration by the Board, the member shall at the meeting disclose the fact to the Board and shall take no part in the consideration or discussion of, or vote on any question with respect to the contract or other matter.

5. Seal of the Board

(1) The seal of the Board shall be authenticated by the signature of the chairman and the Director General to the Board.

(2) In the absence of the chairman any Board member designated by the chairman for the purpose may authenticate the seal.

THIRD SCHEDULE

[Section 18, Act No. 15 of 2003, s. 60, Act No. 2 of 2007, 5th Sch.]

DESIGNATED ROAD AGENCIES

1. Kenya National Highways Authority.
 2. Kenya Rural Roads Authority.
 3. Kenya Urban Roads Authority.
 4. The Kenya Wildlife Service.
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