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THE KENYA ROADS BILL, 2017
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THE KENYA ROADS BILL, 2017

A Bill for

AN ACT of Parliament to provide for the classification, management, construction and maintenance of public roads; to establish the Kenya National Highways Authority, Kenya National Urban Roads Authority and Kenya National Secondary Roads Authority; and to provide for their functions and powers; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Kenya Roads Act, 2017, and shall come into operation on such date as the Cabinet Secretary may, by notice in the *Gazette* appoint, and different dates may be appointed for different provisions.

Short title and commencement.

2. In this Act, unless the context otherwise requires—

Interpretation.

“annual roads works programme” means a roads programme prepared by an Authority, or county government for the development, construction, maintenance or management of a road under this Act;

“Authority” means the Kenya National Highways Authority, the Kenya National Urban Roads Authority or the Kenya National Secondary Roads Authority established under sections 12, 15 and 18, respectively;

“Board” means a Board of an Authority established under sections 14, 17 and 20, respectively;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to roads;

“class” in relation to a road, means the categorization assigned to it under the First Schedule of the Act;

“construction” means supervision, inspection, building, and includes locating, surveying, mapping and eliminating road hazards;

“county executive committee member” means the county executive committee member responsible for matters relating to roads in a county government;

“county road” means a county road classified as such under Part B of the First Schedule;

“county roads agency” means a department or division which shall be responsible for the management development and maintenance of county roads under the county executive in charge of roads;

“Director-General” means the Director-General of an Authority;

“Intergovernmental Relations Technical Committee” means the Intergovernmental Relations Technical Committee established under section 11 of the Intergovernmental Relations Act; No. 2 of 2012.

“Kenya Roads Board” means the Kenya Roads Board established under section 4 of the Kenya Roads Board Act; No. 7 of 1999.

“national trunk road” means a national trunk road classified as such in Part A of the First Schedule;

“public road” has the same meaning as assigned to it under section 2 of the Public Roads and Roads of Access Act; Cap. 399.

“road agency” means any legal body for the time being charged with the responsibility of management of roads using proceeds from the Fund established under the Kenya Roads Board Act; No. 7 of 1999.

“Road Fund” means Kenya Roads Fund established under section 31 of the Kenya Roads Board Act; No. 7 of 1999.

“roadside development” means a physical structure or facility on land within or adjoining a road reserve;

“toll road” includes a bridge or tunnel;

“toll station” means a structure on a toll road where toll is payable under this Act or any electrical or mechanical device on a toll road for recording the liability to pay toll, or any combination of such structure or device;

“vehicle” shall have the meaning assigned to it in the Traffic Act. Cap. 403.

3. The purpose of this Act is to give effect to the provisions of the Fourth Schedule to the Constitution in relation to the functions on roads and to review and rationalize the legal and institutional framework for the management of the road network in Kenya. Object and purpose of the Act.

4. In the performance of their functions and the exercise of their powers, an Authority, shall be guided by the following principles—

Guiding principles.

- (a) the national values and principles of governance specified under Article 10 of the Constitution;
- (b) the principle of co-operation between the national and county governments as envisaged under Article 189 of the Constitution and between the State and non-State actors in the development and management of the road sector;
- (c) the principle of public participation in the development of policies, plans, programmes and budget processes for the development and management of roads;
- (d) transparency, accountability and adoption of sound financial and management principles in the development and maintenance of roads;
- (e) efficiency and effectiveness in the management of the road sector;
- (f) clear assignment of responsibilities between the national and county government in the development, maintenance and management of roads;

5. (1) Subject to subsection (2), this Act shall apply to all public roads managed by the respective Authority and the county governments.

Application of the Act.

(2) Despite subsection (1), this Act shall not apply to national parks and reserves which are under the management and control of Kenya Wildlife Service.

PART II—ESTABLISHMENT OF THE PUBLIC ROADS STANDARDS BOARD

6. There is established a Public Roads Standards Board.

Establishment of the Board.

7. (1) The Board shall consist of a representative from each of the following bodies —

Composition of the Board

- (a) the State Department responsible for public roads;

- (b) the State Department responsible for matters relating to devolution;
- (c) the Inter-governmental Relations Technical Committee;
- (d) the Kenya National Highways Authority;
- (e) the Kenya National Urban Roads Authority;
- (f) the Kenya National Secondary Roads Authority;
- (g) the Kenya Roads Board;
- (h) the Institution of Engineers of Kenya;
- (i) the National Agency responsible for testing and research on roads; and
- (j) the National Transport and Safety Authority.

(2) The Principal Secretary for the State Department responsible for public roads shall be the chairperson of the Board.

(3) The State Department responsible for public roads shall provide the secretariat to the Board.

(4) The Principal Secretary for the State Department responsible for public roads may assign or appoint to the Board such support staff as may be necessary to effectively perform the functions.

(5) The Board shall establish and regulate its own procedures.

(6) The Board may co-opt any person to participate in the deliberations of the Board but the person so co-opted shall have no right to vote.

(7) The Board shall meet at least four times in a calendar year for the transaction of the business.

8. (1) The functions of the Board are to advise the Cabinet Secretary on—

- (a) standards for road and bridge materials, design, construction, maintenance and performance levels;
- (b) standard contract forms for works and consultancy services;
- (c) research and studies necessary for development and updating on public roads standards;

Functions of the
Public Roads
Standards Board.

- (d) the types, sizes and usage of vehicles on roads and maximum vehicle and axle load limits for purposes of protecting roads from damage;
- (e) development and training of human resources required for the development, rehabilitation and maintenance of roads; and
- (f) monitoring system to ensure adherence to the standards.

(2) In the execution of the functions under subsection (1), the Board shall take into account —

- (a) best international practices;
- (b) input from the general public and experts; and
- (c) the capacity of the relevant entities to comply with the standards.

9. (1) The Cabinet Secretary shall by regulations prescribe standards for testing, design, construction and maintenance of national trunk roads by the roads authorities and county roads by county Governments.

Roads Standards.

(2) The Cabinet Secretary shall publish in the Kenya *Gazette* the public roads standards formulated under this section.

(3) Each Authority and county Government shall comply with the public roads standards prescribed by the Cabinet Secretary under this Act.

PART III—CLASSIFICATION OF NATIONAL TRUNK AND COUNTY ROADS

10. (1) A public road shall be classified in the manner set out in the First Schedule.

Classification of national trunk and county roads.

(2) Where a new road is established, the responsible Authority or county government shall submit to the Cabinet Secretary a request for classification of the road, and the Cabinet Secretary shall assign the road in accordance with the classification that accurately reflects the function served by the road for purposes of ensuring that—

- (a) the classification accurately reflects the function served by the road; and
- (b) all parts of the country have reasonable access to a national trunk road or a county road.

(3) The Cabinet Secretary may, from time to time, review the classification and assignment of public roads under subsection (2) for purposes of ensuring that—

- (a) the classification accurately reflects the function served by the road; and
- (b) all parts of the country have reasonable access to a national trunk road or a county road.

11. (1) Each Authority and each county government shall cause to be maintained and kept an up to date inventory of the roads under its management, in such form and with such detail, including categorization and identity details, as prescribed by the Cabinet Secretary.

Inventory on classification and assignment of roads.

(2) The Cabinet Secretary shall at least once in ten years publish the inventory under subsection (1) in the *Kenya Gazette*.

PART IV—ESTABLISHMENT OF ROAD AUTHORITIES

12. (1) There is established the Kenya National Highways Authority.

Establishment of the Kenya National Highways Authority.

(2) The Authority established under subsection (1) 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 and disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all such other things or acts as may be necessary for the furtherance of its purpose and functions.

(3) The headquarters of the Authority shall be in the capital city, but the Authority may establish such administrative offices in each county, as may be necessary for the furtherance of its functions under this Act.

13. (1) The Authority shall be responsible for the management, development, rehabilitation and maintenance of primary national trunk roads Classes S, A and B as specified in Part A of the First Schedule to this Act.

Functions of the Kenya National Highways Authority.

(2) For the purposes of discharging its responsibility, the Authority shall have the following functions and duties—

- (a) constructing, upgrading, rehabilitating and maintaining roads under its jurisdiction ;
- (b) controlling primary national trunk roads and road reserves and access to roadside developments;
- (c) implementing road policies in relation to primary national trunk roads;
- (d) ensuring adherence to the rules and guidelines on axle load control as provided under the Traffic Act;
- (e) ensuring that the quality of road works is in accordance with the standards prescribed by the Cabinet Secretary;
- (f) overseeing the management of traffic and road safety on primary national trunk roads, in collaboration with other agencies;
- (g) collecting and collating all data related to the use of primary national trunk roads as may be necessary for efficient planning under this Act;
- (h) monitoring and evaluating the use of national trunk roads;
- (i) planning the development and maintenance of primary national trunk roads;
- (j) advising the Cabinet Secretary on all matters relating to primary national trunk roads;
- (k) preparing the investment programme and the annual road works programmes for all primary national trunk roads;
- (l) liaising and coordinating with other road agencies in planning and on operations in respect of roads; and
- (m) performing such other functions related to the implementation of this Act as may be directed by the Cabinet Secretary.

14. (1) There is established the Board of the Kenya National Highways Authority.

Board of the
Kenya National
Highways
Authority

(2) The Board of the Kenya National Highways Authority shall consist of the following members—

- (a) a non-executive Chairperson to be appointed by the President from amongst the members appointed under paragraph (f) ;
- (b) the Principal Secretary in the ministry or State department responsible for matters relating to roads;
- (c) the Principal Secretary in the ministry or State department responsible for matters relating to transport;
- (d) the Principal Secretary to the National Treasury;
- (e) the Director-General of the Authority, who shall be an *ex officio* member and secretary to the Board;
- (f) five persons, nominated by the following organizations—
 - (i) Institution of Engineers of Kenya;
 - (ii) Institute of certified Public Accountants of Kenya;
 - (iii) Law Society of Kenya;
 - (iv) Institute of Surveyors of Kenya; and
 - (v) Kenya Private Sector Alliance;

(3) The members of the Authority under paragraphs (1) (b) to (d) may designate an officer from their respective Ministry or State department to represent them.

(4) The nominating organizations specified under subsection (1) (f) shall submit three names of the candidates approved at their respective annual general meeting for appointment by the Cabinet Secretary:

Provided that only one candidate shall be eligible for appointment by the Cabinet Secretary in accordance with subsection (1) (f).

(5) Despite subsection (1), the Principal Secretary in the ministry or State department responsible for matters

relating to roads and the Principal Secretary in the ministry or State department responsible for matters relating to transport or their alternates may both not be members of the Board if they serve under the same Cabinet Secretary.

15. (1) There is established the Kenya National Urban Roads Authority.

Establishment of the Kenya National Urban Roads Authority.

(2) The Authority established under subsection (1) 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 and disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all such other things or acts as may be necessary in furtherance of its purpose and functions.

(3) The headquarters of the Authority shall be in the Capital city, and the Authority may establish such administrative offices in each county, as may be necessary for the furtherance of its functions under this Act.

16. (1) The Authority is responsible for the management, development, rehabilitation and maintenance of primary national trunk roads Classes H and J as described in the First Schedule Part A of this Act.

Functions of the Kenya National Urban Roads Authority.

(2) For the purposes of discharging its responsibility, the Authority shall have the following functions and duties—

- (a) constructing, upgrading, rehabilitating and maintaining roads under its jurisdiction;
- (b) controlling primary national trunk roads Classes H and J and road reserves and access to roadside developments;
- (c) implementing road policies in relation to primary national trunk roads Classes H and J;
- (d) ensuring adherence to the rules and guidelines on axle load control as prescribed under the Traffic Act and any regulations made under this Act;

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- (e) ensuring that the quality of road works is in accordance with such standards as may be prescribed by the Cabinet Secretary;
- (f) overseeing the management of traffic and road safety on primary national trunk roads Classes H and J, in collaboration with the National Transport and Safety Authority;
- (g) collecting and collating all such data related to the use of primary national trunk roads Classes H and J as may be necessary for efficient planning under this Act;
- (h) monitoring and evaluating the use of primary national trunk roads Classes H and J;
- (i) planning the development and maintenance of primary national trunk roads Classes H and J;
- (j) advising the Cabinet Secretary on all matters relating to primary national trunk roads Classes H and J;
- (k) preparing the sector investment programme road works programmes for all primary national trunk roads Classes H and J;
- (l) liaising and coordinating with other road agencies in planning and on operations in respect of roads; and
- (m) performing such other functions related to the implementation of this Act as may be directed by the Cabinet Secretary.

17. (1) The Board of the Kenya National Urban Roads Authority shall consist of the following members—

- (a) a non-executive Chairperson to be appointed by the President from amongst the members appointed under paragraph (f);
- (b) the Principal Secretary in the ministry or State department responsible for matters relating to roads;
- (c) the Principal Secretary in the ministry or State department responsible for matters relating to transport;

Board of the
Kenya National
Urban Roads
Authority.

- (d) the Principal Secretary in the National Treasury;
- (e) the Director-General of the Authority, who shall be an *ex officio* member and secretary to the Board;
- (f) five persons, nominated by the following organizations—
 - (i) Institution of Engineers of Kenya;
 - (ii) Institute of Certified Public Accountants of Kenya;
 - (iii) Law Society of Kenya;
 - (iv) Institute of Surveyors of Kenya; and
 - (v) Kenya Institute of Physical Planners.

(2) The members of the Authority under paragraphs 1 (b) to (d) may designate an officer from their respective Ministry or State department to represent them.

(3) The nominating organizations specified under subsection (1) (f) shall submit three names of the candidates approved at their respective annual general meeting for appointment by the Cabinet Secretary:

Provided that only one candidate shall be eligible for appointment by the Cabinet Secretary in accordance with subsection (1) (f).

(4) Despite subsection (1), the Principal Secretary in the ministry or State department responsible for matters relating to roads and the Principal Secretary in the ministry or State department responsible for matters relating to transport or their alternates may both not be members of the Board if they serve under the same Cabinet Secretary.

18. (1) There is established the Kenya National Secondary Roads Authority.

(2) The Authority established under subsection (1) 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 and disposing of movable and immovable property;

Establishment of
the Kenya
National
Secondary Roads
Authority.

- (c) borrowing and lending money; and
- (d) doing or performing all such other things or acts as may be necessary in furtherance of its purpose and functions.

(3) The headquarters of the Authority shall be in the Capital city, and the Authority may establish such other administrative offices, as may be necessary for the furtherance of its functions under this Act.

19. (1) The Authority is responsible for the management, development, rehabilitation and maintenance of secondary National Trunk Roads classes C and D as specified in the Part A of the First Schedule to this Act.

Functions of the Kenya National Secondary Roads Authority.

(2) For the purposes of discharging its responsibility, the Authority shall have the following functions and duties—

- (a) constructing, upgrading, rehabilitating and maintaining roads under its jurisdiction;
- (b) controlling secondary national trunk roads and road reserves and access to roadside developments;
- (c) implementing road policies in relation to secondary national trunk roads;
- (d) ensuring adherence to the rules and guidelines on axle load control as prescribed under the Traffic Act and any regulations made under this Act;
- (e) ensuring that the quality of road works is in accordance with such standards as may be prescribed by the Cabinet Secretary;
- (f) overseeing the management of road usage on secondary roads in collaboration with other agencies;
- (g) collecting and collating all such data related to the use of secondary national trunk roads as may be necessary for efficient planning under this Act;
- (h) monitoring and evaluating the use of National Secondary Trunk Roads;
- (i) planning the development and maintenance of national secondary trunk roads;

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- (j) advising the Cabinet Secretary on all matters relating to national secondary trunk roads;
- (k) preparing the sector investment programme road works programmes for all national secondary trunk roads;
- (l) liaising and coordinating with other road agencies in planning and on operations in respect of roads; and
- (m) performing such other functions related to the implementation of this Act as may be directed by the Cabinet Secretary.

20. (1) There is established the Board of the Kenya National Secondary Roads Authority.

Board of the
Kenya National
Secondary Roads
Authority.

(2) The Board of the Kenya National Secondary Roads Authority shall consist of the following members —

- (a) a non-executive Chairperson to be appointed by the President from amongst the members appointed under paragraph (f);
- (b) the Principal Secretary in the ministry or State department responsible for matters relating to roads;
- (c) the Principal Secretary in the ministry or State department responsible for matters relating to transport;
- (d) the Principal Secretary in the National Treasury;
- (e) the Director-General who shall be an *ex officio* member and secretary to the Board;
- (f) five persons, nominated by the following organizations—
 - (i) Institution of Engineers of Kenya;
 - (ii) Institute of Certified Public Accountants of Kenya;
 - (iii) Law Society of Kenya;
 - (iv) Institute of Surveyors of Kenya; and
 - (v) Kenya Institute of Physical Planners.

(3) The members of the Authority under paragraphs (1) (b) to (d) may designate an officer from their respective Ministry or State department to represent them.

(4) The nominating organizations specified under subsection (1) (f) shall submit three names of the candidates approved at their respective annual general meeting for appointment by the Cabinet Secretary:

Provided that only one candidate shall be eligible for appointment by the Cabinet Secretary in accordance with subsection (1) (f).

(5) Despite subsection (1), the Principal Secretary in the ministry or State department responsible for matters relating to roads and the Principal Secretary in the ministry or State department responsible for matters relating to transport or their alternates may both not be members of the Board if they serve under the same Cabinet Secretary.

21. (1) The Boards of the Authorities shall be responsible for overseeing the operations of the Authority for purposes of—

Responsibilities of the boards of the Authorities.

- (a) attaining equity in the development of road network in all parts of Kenya;
- (b) securing continuing improvements of performance;
- (c) protecting the long term viability of the Authority;
- (d) ensuring that financial needs of the Authority are addressed; and
- (e) any other duties and responsibilities as may be undertaken in furtherance of their mandate in consultation with the Cabinet Secretary.

(2) Without prejudice to the provisions of subsection (1), the Board shall ensure that—

- (a) appropriate strategic plans consistent with government roads subsector policy and targets are in place;
- (b) the Authority has management structures and systems for monitoring management performance against plans and targets and that corrective action is taken where necessary;

- (c) appropriate systems and practices are established for management, financial planning and control, including systems and practices for the maintenance of accurate and comprehensive records of all transactions, assets and liabilities and physical and human resources of the Authority;
- (d) all such plans, targets, structures, systems and practices are regularly reviewed and revised as necessary to address changing circumstances and reflect best practices;
- (e) the Authority observes high standards of corporate governance;
- (f) the national government is advised, as soon as practicable, of any material development that—
 - (i) adversely affects the financial or operating capacity of the Authority; or
 - (ii) gives rise to an expectation that the Authority may not be able to meet its debts as and when they fall due; and
- (g) all information furnished by the Authority is accurate and comprehensive.

PART V—ADMINISTRATIVE PROVISIONS

22. (1) A person shall be qualified for appointment as a chairperson or a member of the Board under sections 14, 17 and 20 if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has knowledge and experience of at least ten years in the relevant field; and
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A member of the Authority appointed under sections 14, 17 and 20 may be disqualified from office if the member—

- (a) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;

Qualifications for appointment of the chairpersons and members of the Board.

- (b) is convicted of an offence involving dishonesty or fraud;
- (c) otherwise fails to comply with the requirements of Chapter Six of the Constitution;
- (d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
- (e) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his or her duties as a member of the Board.

(3) The procedure for the appointment of the chairperson and members of the Authority under sections 14, 17 and 20 shall be as set out in Part C of the Second Schedule to this Act.

23. In appointing the chairperson and other members of the Board under this Act, the President and the Cabinet Secretary shall ensure that—

Considerations on appointment of members of the Board.

- (a) the board reflects the regional and ethnic diversity of the people of Kenya; and
- (b) not more than two-thirds of the members are of the same gender.

24. (1) The chairperson and members of each board other than the *ex officio* members and public officers shall hold office for a period of three years and shall be eligible for re-appointment for one further term.

Terms and conditions of service.

(2) The appointment of the members of the Board shall be by notice published in the Gazette.

25. The Chairperson and members of a Board shall be paid such allowances as the Cabinet Secretary may determine in consultation with the Salaries and Remuneration Commission.

Remuneration of chairperson and members.

26. A person shall cease to be the chairperson or a member of the Board, if that person—

Vacation of office.

- (a) resigns in writing to the —
 - (i) President, in case of Chairperson; or
 - (ii) Cabinet Secretary, in case of other members;

- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is absent from three consecutive meetings of the Board without the permission of the chairperson;
- (d) is declared bankrupt;
- (e) is convicted of an offence involving fraud, dishonesty or moral turpitude;
- (f) is unable to perform the functions of his office by reason of mental or physical infirmity; or
- (g) dies.

27. (1) A Board may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.

Committees of a Board.

(2) The Board may co-opt any person whose knowledge and skills are necessary for the performance of the functions of the Board to sit on any committee established under subsection (1).

28. A Board may, by resolution either generally or in any particular case, delegate to any of its committees, or to any of its members, officers or employees, the exercise of any of its powers or the performance of any of its functions under this Act or under any other written law.

Delegation of powers.

29. (1) There shall be a Director-General of each Authority who shall be competitively recruited and appointed by the respective Board on such terms and conditions as the Board shall determine.

Director- General.

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

- (a) holds a Bachelor's degree in Civil Engineering, a master's degree from a University recognized in Kenya and is registered by the Engineers Board of Kenya.
- (b) has had at least ten years' experience in a management level in the roads sector; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

(3) The Director-General shall be an *ex officio* member of the Board, and shall have no right to vote at any meeting of the Board.

(4) The Director-General shall be appointed for a term of three years and shall be eligible for re-appointment for one further term of three years.

30. (1) The Director-General shall be the chief executive and accounting officer of the Authority and secretary to the Board.

Functions of
Director- General.

(2) The Director-General shall, subject to the direction of the Board—

- (a) be responsible for the day to day management of the Authority;
- (b) manage the funds, property and affairs of the Authority;
- (c) be responsible for the management of staff of the Authority;
- (d) implement the policies, programmes and objectives of the Authority;
- (e) cause to be prepared for the approval of the Board—
 - (i) the strategic plan and annual plan of the Board; and
 - (ii) the annual budget and audited accounts of the Board; and
- (f) perform such other duties as may be assigned by the Board.

31. (1) A Board may terminate the appointment of its Director-General in accordance with the terms and conditions of the service, for—

Removal of
Director- General.

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehavior; or
- (c) incompetence or neglect of duty.

(2) Before the removal of the Director-General under subsection (1), the Board shall constitute a committee which shall—

- (a) investigate the circumstances giving rise to the proposed removal; and
- (b) make recommendations to the Board.

(3) The committee constituted under subsection (2) shall give the Director-General an opportunity to be heard on the grounds alleged for his removal.

(4) The committee constituted under subsection (2) shall submit to the Board its recommendations on whether or not the Director-General should be removed from office, and the Board shall take such action as it considers appropriate.

(5) Where the Board resolves to remove the Director-General from office, such resolution shall not be valid unless it is supported by at least six members of the Board.

32. (1) The Director-General may, with the approval of a Board, appoint such officers, and staff as are necessary for the proper and efficient discharge of the functions of the Board under this Act.

Appointment of officers, agents and staff.

(2) The officers, and staff appointed under subsection (1) shall serve on such terms and conditions as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

(3) In appointing the officers, and staff of the Board, the Director-General and the Board shall observe the values and principles of public service provided under Article 232 of the Constitution, and shall ensure that no more than two-thirds of the members are of the same gender.

33. A Board shall establish such organizational structures and adopt such rules and procedures for the efficient administration of the activities of the Authority as it may consider appropriate.

Structural organization of the Authority.

34. An act done by the chairperson or member of the Board or an officer, employee or agent of the Authority, shall not if the act is done bona fide for the purpose of executing any provisions of this Act, render the chairperson or member, or that officer, employee or agent personally liable for any action, claim or demand.

Protection from personal liability.

35. The provisions of this Act shall not relieve an Authority of the liability to pay compensation or damages

Liability for Damages.

to any person for any injury to that person caused by the exercise of any power conferred, or by failure, whether wholly or partially, of any action under this Act.

36. (1) A performance agreement shall be executed between the Cabinet Secretary and each Authority in respect of the management and work programme of the respective Authority.

Performance agreement.

(2) The Cabinet Secretary shall make guidelines providing for the manner in which the performance agreement required under subsection (1) shall be made.

37. (1) Each Authority shall, after the end of each financial year but within a period of four months, submit to the Cabinet Secretary an annual report on its activities and operations.

Annual report.

(2) An annual report submitted under subsection (1) shall include—

- (a) information with regard to the progress and policy of the entity;
- (b) a copy of the audited accounts of the entity in respect of that year together with the report of the Auditor-General;
- (c) an overview of the operations of the entity;
- (d) an assessment of the degree to which performance targets have been achieved;
- (e) a general report on the degree in which the objectives of this Act have been realized, and the levels of compliance with the provisions of the Act; and
- (f) such other information as the Cabinet Secretary may request in writing.

38. Each Authority may make Regulations generally relating to the conditions of service of its employees, and in particular, but without prejudice to the generality of the foregoing, relating to—

Power to make Regulations relating to employees.

- (a) the appointment, dismissal, discipline, pay and leave of, and the security to be given to its staff;
- (b) appeals by officers and staff against dismissal or other disciplinary measures; and

- (c) the establishment and maintenance of medical benefits and loan funds, and the contributions payable thereto and the benefits recoverable there from.

39. (1) The affixing of the common seal of an Authority, may be authenticated by the signature of the chairperson and the Director-General.

Common seal.

(2) A document not required by law to be made under seal and all decisions of an Authority, may be authenticated by the signature of the Director-General,

(3) Where the chairperson or the Director-General is absent, the Board may in consultation with the Cabinet Secretary nominate a member to authenticate the seal on their behalf.

(4) The common seal of the Authority shall be kept in such custody as the Board may direct.

(5) The common seal of the Authority when affixed to a document and authenticated shall be officially noticed, and unless the contrary is proved, an order or authorization of the Authority, under this section shall be presumed to have been given.

40. The conduct of business and affairs of the Board shall be conducted in accordance with the Second Schedule.

Conduct of Business and affairs of the Board.

PART VI—GENERAL POWERS OF AN AUTHORITY

41. Where an Authority requires any land for its purposes, the Cabinet Secretary shall submit a request for the acquisition to the National Land Commission, and the provisions of Part VIII of the Land Act, 2012 shall apply, provided that an Authority may in consultation with the National Land Commission pay directly any compensation due to any person whose land or property is acquired under the Land Act, 2012 for purposes of the Authority.

Acquisition of land.
No. 6 of 2012.

No. 6 of 2012.

42. (1) An authorized employee of the Authority may, for the purposes of this Act, enter upon any land and survey such land or any portion thereof.

Power to enter and survey land.

(2) Where any damage on the land is caused by reason of the exercise of the powers conferred by this section, the owner or occupier of the land shall be entitled to compensation in accordance with this Act.

43. (1) Any authorized employee of the Authority may, for the purposes of preventing the occurrence of an accident, preserving the safety of traffic or the safe operation of any service provided by the Authority, or repairing any damage caused by an accident, enter upon any land and—

Power to enter land to prevent accidents, etc.

- (a) cut down or remove any tree or other obstruction, not being a building, which obscures the view of any traffic sign, which is likely to cause any obstruction or any danger to the safety of traffic or of any such service; or
- (b) execute such other works as may be necessary to prevent the occurrence of an accident or to repair any damage caused as a result of an accident.

(2) If a tree or other obstruction cut down or removed under subsection (1) (a) came into existence subsequent to the erection of a traffic sign or to the service being provided at that place, compensation shall not be payable in respect of the entry, or the cutting down or removal of the tree or other obstruction.

44. (1) Subject to the provisions of this section, an Authority, or any of its authorized employees may, for the purposes of the Authority, enter on any land and alter the position of any electric, telephone, telegraphic, fibre optic or other wire of any nature, or the position of any drain or sewer.

Power to enter, and to alter position of pipes, etc.

(2) Where an Authority intends to exercise any power under subsection (1), it shall give reasonable notice of its intention to do so to the person having control of the pipe, wire, sewer or drain and—

- (a) such person may authorize a representative to superintend such work, and may require the Authority to execute such work to the satisfaction of such representative; and
- (b) the Authority shall make arrangements for the maintenance of the supply of gas, oil, compressed air or electricity, for the continuance of the telephone, telegraph or other wire-borne communications or for the maintenance of the sewer or drainage, as the case may be, during period of execution of such work.

45. (1) For purposes of this section—

- (a) “pipe-borne utilities” refers to any pipes, devices and fittings for the supply or transmission of gas, oil products, water, wastewater, compressed air and any material conveyed by means of piping;
- (b) “wire-borne utilities” refers to wires, devices and fittings for the transmission of electricity, telephone services, telegraph services, data, and any other service conveyed by means of conductive wire, fibre optic cable or other wire or cable of any nature which is placed on the road reserve; and
- (c) “infrastructure utilities” refers to pipe borne utilities, wire-borne utilities, covered or open drains, and any other physical device for the provision, conveying or supply of services.

Power to remove pipes, etc. from within the road reserve.

(2) Where an infrastructure utility is located within a road reserve, the provider or operator of the infrastructure utility shall, on a written request by the respective Authority, relocate such infrastructure utility to a location or alignment approved by the Authority at no cost to that Authority.

(3) Where the Authority intends to exercise any power under subsection (2), it shall give reasonable notice of its intention to do so to the person having control of such infrastructure utility, and such person shall cause to be removed such infrastructure utility within sixty days:

Provided that service of the notice through a newspaper of wide circulation in Kenya shall be considered to be a proper notice under this Act.

(4) Where, under subsection (2) or (3), a person having control of an infrastructure utility fails to remove the infrastructure utility within the time stated in the notice, the Authority may remove such infrastructure utility at the cost of the person who was unable to comply with the notice under subsection (3).

46. (1) A road Authority may—

- (a) in the development, construction, rehabilitation or maintenance of a road;

Occupation of private land.

- (b) in the construction of a temporary road for use by the public pending the carrying out of the road works under paragraph (a); or
- (c) in providing a temporary road for use by the public where a road has become impassable,

use and occupy for such period as may be necessary for the carrying out of the road works, any land along or adjoining the road in relation to which the road works are to be carried out.

(2) A road Authority shall not occupy land under subsection (1) unless it has issued to the registered owner or occupier of the land, a notice of at least thirty days of its intention to occupy the land.

(3) A road authority shall not be required to issue a notice under subsection (2) where—

- (a) in the opinion of the road authority, it is necessary as a matter of urgency to use and occupy land that is more than fifteen metres from a dwelling-house for the purpose of reconstructing or repairing a particular road; and
- (b) the road authority gives the occupier of the land such notice as is practicable in the circumstances and, immediately after giving the notice, reports to the respective Cabinet Secretary the circumstances requiring such a notice to be dispensed with.

(4) A road authority shall not use or occupy land under subsection (1) where the land is located within fifteen metres of a dwelling house unless—

- (a) the occupier of the land has consented in writing to the use or occupation, or
- (b) if that consent is not given, the respective Cabinet Secretary has given written authority for the use or occupation.

(5) The road Authority shall compensate an owner of land for any loss or damage arising from the exercise of powers under this section.

47. An Authority may, for its purposes, take any water from any natural watercourse subject to the Water Act, 2002.

Power to take
water.
No.8 of 2002.

48. (1) Subject to the Constitution an Authority, by its agents and officers, for the purpose of the construction and maintenance of roads or the carrying out of any works which it is empowered under this Act or under any agreement, direction, delegation or transfer entered into, given or made under this Act to carry out, may enter upon land and remove there from any soil, clay, rock, gravel, murrum, lime, sand, shale, shingle, slate or surface soil, and may carry across any land, by a route to be agreed between the owner and in the event of failure to agree, cause to be acquired compulsorily such land, and remove such material, and may provide within the land in connection with such functions labour or other camps, works buildings, access roads, and space for stockpiling, and may erect machinery and other gear for the purpose of quarrying any such material.

Access to material sites etc.

(2) A county exercising its authority under subsection (1) may enter land only within the county.

(3) Before entering upon any land for the purpose of exercising any of the powers conferred by subsection (1), a road authority shall give not less than one month's notice by personal service or by registered post to the last known address of the owner or occupier of such land, of the intention to enter upon such land, the powers which it proposes to exercise, and the area of such land to which it will confine its activities.

(4) If the owner or occupier of such land is aggrieved by the proposed exercise by the road authority of the powers conferred by this section or by the proposed exercise of the powers in the area specified in the notice, he may, within one month from the service upon him of the notice under subsection (3), make representations to the National Land Commission thereon and shall within the same period inform the road authority concerned of the nature of such representations.

(5) Where representations are made to the National Land Commission under subsection (4), the National Land Commission may, after consulting the road authority concerned, give such direction to the road authority thereon as it thinks fit.

(6) Compensation shall be payable by a road authority to the owner or occupier of any land for any damage done

to buildings, roads or crops, or otherwise, in the exercise by it of any of the powers conferred upon it by this section, and for any interference with the rights of occupancy of such land.

(7) If, as a result of the exercise of any of the powers conferred by this section, a danger to persons (other than employees of the road authority or of their agents) or to domestic animals is created, the road authority shall, at the request of the owner or occupier of the land, carry out fencing at its own expense to such an extent as adequately to guard against such danger.

(8) The sites for any labour or other camps to be provided by the road authority and the alignment of any roads of access shall be determined by the road authority only after consultation with the owner and occupier of the land on which the same are to be situated.

(9) Any pit or quarry made in exercise of any of the powers conferred by this section shall, at the request of the owner or occupier of the land, be filled up or, in the discretion of the road authority, fenced, at the expense of the road authority, when the road authority abandons such pit or quarry.

(10) This section shall be subject to the Forests Act and any rules made thereunder, and to the extent of any inconsistency between this section and that Act and any rules thereunder, the latter shall prevail.

Cap. 385.

(11) For the purpose of this section, the expression "owner or occupier" means in respect of Government land, the National Land Commission, in respect of Trust land (other than land the title to which is registered under the Land Consolidation Act) means the county, and in respect of forest areas, means the Chief Conservator of Forests.

Cap. 283.

49. (1) An Authority may, for its purposes, temporarily close or divert a public road and similarly close or divert a road permanently.

Power to close a public road.

(2) It shall be lawful for a road authority or its authorized representative, for the purpose of preventing damage being caused to any road or for the purpose of carrying out any works which it may consider necessary or desirable in connection with the maintenance or improvement of any road, to close the whole or any part of

such road to all vehicles or any particular type of vehicles at any time for any period it may think fit.

(3) It shall not be lawful for the driver or person in charge of any vehicle to drive or haul the vehicle or cause it to be driven or hauled over any portion of a road which is closed to traffic and where a conspicuous notice is displayed to the effect that the road is closed, unless the driver or person in charge of the vehicle has received permission, in writing, from the relevant Authority.

50. (1) Subject to subsection (2), where a railway has been or is proposed to be constructed so as to cross a road, the Authority shall require the owner or operator of the railway —

Railway crossings.

- (a) to erect such gates and to execute such other works as may be necessary for the safety of the public;
- (b) in the case of national trunk roads, to construct the railway in such a manner that it does not cross the road on the level; and
- (c) the owner or operator of the railway shall comply with such requirements.

(2) The respective Authority shall, before making any requirement under this section, communicate with the owner or operator of the railway and shall take into consideration any representations made by the owner or operator.

(3) Where as a result of a requirement made by the Authority under this section, any works are to be constructed by the owner or operator of the railway, the manner of construction of such works and the apportionment of the cost of construction and maintenance thereof shall be determined by an agreement between the owner or operator of the railway and the Authority, and if no such agreement is made, it shall be determined by an arbitrator appointed by the Cabinet Secretary.

51. An Authority shall have power to require the owner of any land to remove, lower or trim to the satisfaction of the Authority any tree, shrub or hedge overhanging or interfering in any way with the traffic on any road or with any wires or works within the road.

Removing trees, etc.

52. (1) In this section—Inter-county roads
and bridges.

“Inter-county road” includes a bridge, drain and other services associated with a road and that crosses or runs along the boundaries of more than one county government.

(2) Each county government shall be jointly responsible to maintain an inter county road.

(3) Where a county road crosses or runs along the boundaries of more than one county government, the concerned county governments may enter into an agreement stating the manner in which —

- (a) the inter-county road shall be constructed or maintained; or
- (b) costs for constructing or maintaining the road.

(4) Where the relevant county governments are not able to agree as provided under subsection (3), any county government may refer the matter to the Intergovernmental Relations Technical Committee under the Intergovernmental Relations Act for determination by the Council of Governors, on any matter including—

No. 2 of 2012.

- (a) whether a road, bridge, drain or other service is required;
- (b) the standard of construction or maintenance;
- (c) each county government’s share of construction or maintenance costs; or
- (d) which county government should exercise management and control of the road.

53. (1) A driver or a person in charge of a vehicle shall not drive or haul a vehicle or cause it to be driven or hauled over any bridge on or near a conspicuous notice which has been placed to the effect that such bridge is insufficient to carry traffic in excess of a specified weight, unless—

Damage to road or
bridge.

- (a) the gross weight of the vehicle and any trailer attached thereto is less than the weight specified; or
- (b) the driver or person in charge of the vehicle has obtained the consent, in writing, of the relevant Authority.

(2) Where a road or bridge is damaged—

- (a) by reason of a vehicle passing over it in contravention of the provisions of subsection (1) or of the axle load restrictions under the Traffic Act, East African Community Vehicle Load Control Act or the provisions of any regulations made under this Act; or
- (b) by reason of any vehicle passing over a bridge on the road or coming into contact with any portion thereof other than the surface of the road,

Cap. 403.

it shall be lawful for the Authority to make good such damage and to recover the cost thereof from the owner of the vehicle, and the person driving or hauling it shall be jointly and severally liable to the Authority for the damage.

(3) A certificate under the hand of any person authorized on that behalf by the concerned Authority stating the amount of the cost of making good such damage under subsection (2) shall be prima facie evidence of such cost.

54. The Cabinet Secretary, in consultation with the Authority may declare a national trunk road or a portion thereof as a national toll road for purposes of this Act, and may make Regulations for the better carrying out of the provisions of this section.

National toll roads.

55. (1) Subject to subsection (2), the Authority may establish and maintain national toll bridges, together with, approaches, ramps and other essential appurtenances, for the passage or carriage of passengers, animals, goods and vehicles on any road in which it is responsible under this Act.

National toll bridges.

(2) The establishment of a ferry boat service under subsection (1) shall require the approval of the Cabinet Secretary and the terms and conditions governing its operation, including the charges for use of the ferry, shall be provided by Regulations made by the Cabinet Secretary.

(3) An agreement in which a private party develops, operates or maintains a ferry boat service on behalf of the Authority or Kenya Wildlife Service shall be approved under the Public Private Partnership Act.

No. 15 of 2013.

56. (1) The Cabinet Secretary responsible for finance may, in consultation with the Cabinet Secretary, make Regulations in accordance with this section authorizing the imposition and collection of road user charges by the Authority in respect of roads, including national and county roads.

Road user charges.

(2) A road user charge shall be a charge levied in respect of the distance travelled by a vehicle on a road—

- (a) for the purpose of recovering the cost of maintaining, repairing and replacing the road; and
- (b) reasonably related to the impact of that vehicle on such cost.

(3) Regulations made under this section shall be tabled before Parliament for approval, and shall not take effect until such approval is obtained.

(4) The Regulations made under this section may provide for—

- (a) charges related to the weight of the vehicle, including exemption from charges for vehicles below a minimum weight;
- (b) exemptions for classes of vehicles whose purpose or design means they are unsuitable for regular road use, or for vehicles used primarily off-road;
- (c) any other provision necessary or desirable for the equitable distribution of the burden of the charge on road users;
- (d) a requirement that road users subject to the charge must be licensed;
- (e) the requirement that vehicles carry distance recorders;
- (f) the allocation by the Roads Fund of the net proceeds of the charges among national and county roads; and
- (g) any other matter necessary or desirable in connection with administration and imposition, collection and enforcement of charges.

PART VII—FINANCIAL PROVISIONS

57. (1) The financial year of each Authority shall be the period of twelve months commencing on the 1st of July in every year and ending on the 30th of June in the next succeeding year.

Financial year.

(2) Without prejudice to subsection (1), the first financial year shall be the period commencing on the appointed date of this Act and ending on the 30th June subsequent to that date.

58. The funds and resources of each Authority shall consist of —

Funds and Resources of the Authority.

- (a) monies paid to it from the Road Fund;
- (b) any other monies appropriated by Parliament;
- (c) funds accruing from investments made by the Authority;
- (d) grants, loans, gifts or donations from the Government or any other source, made with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for finance;
- (e) revenue earned from the activities of the Authority under this Act; and
- (f) any other funds received by the Authority in the performance of its functions under this Act.

59. The receipts, earnings or accruals of each Authority and the balances at the end of each financial year shall be retained for the purposes for which the respective Authority is established.

Receipts, earnings and accruals for the Authority.

60. Subject to the written approval of the Cabinet Secretary and the National Treasury, an Authority may invest any part of its funds in such a manner as it may consider appropriate.

Investment of the Authority's Fund.

61. An Authority may borrow money required for the exercise of its functions and for meeting its obligations after approval by the Cabinet Secretary.

Borrowing by the Authority.

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

Annual estimates.

(2) The annual estimates prepared under subsection (1) shall make provision for all the estimated expenditure of each Authority, for the financial year concerned, and in particular shall provide for the—

- (a) payment for the infrastructural developments and provision of services;
- (b) payment of salaries, allowances and other charges in respect of the employees and staff of the Authority and the members of the Board;
- (c) payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the Roads Fund;
- (d) acquisition, maintenance, repair and replacement of the equipment and other movable property of the Authority; and
- (e) creation of such funds to meet future or contingent liabilities in respect of benefits, insurance and the replacement of buildings or equipment.

(3) The annual estimates under this section shall be approved by the Board at least two months before commencement of the financial year to which they relate, and shall be submitted to the Cabinet Secretary for onward transmission to the National Assembly.

63. (1) Each Authority shall keep proper books of account of its income, expenditure, assets and liabilities which shall be subject to the provisions of the law regulating State Corporations.

Accounts and
Audit.

(2) The annual accounts prepared under subsection (1) shall be audited and reported in accordance with the provisions of the law relating to public audit.

64. Each Authority and each county government shall, not later than six months before the end of each financial year, cause to be prepared and submitted to the Kenya Roads Board for approval an annual road works programme based on the approved five-year road investment program in respect of the ensuing financial year, comprising estimates of expected maintenance, development and capital expenditure of the Authority or county government in the said financial year to be financed.

Annual Roads
works
programme.

65. (1) The Cabinet Secretary shall, once in every five years, in consultation with the national and county government and the Kenya Roads Board, cause to be prepared a road investment program for approval by the Cabinet Secretary responsible for finance.

Road investment programme.

(2) The road investment programme prepared under subsection (1) shall outline development and maintenance priorities costed with respect to stated sections of the road, and also aggregated by class, traffic loading or such other detail as may be specified.

66. Each Authority shall perform its functions in accordance with the financial principles and shall ensure, as far as reasonably practicable, that its expenditure is chargeable on its revenue.

Principles of operation.

67. Each Authority may, subject to the approval of the Cabinet Secretary, impose any levy, charges or fees for any of its services or for the use of road reserves under their jurisdiction.

Fees and Charges.

68. (1) Where an Authority, pursuant to section 45 imposes levies, charges or fees for any of its services or for use of its facilities, the schedule of charges shall be published in the *Gazette*.

Charges and fees to be Gazetted.

(2) The schedule of charges published under subsection (1) shall come into operation on a date specified on the *Gazette*, which shall be at least thirty days after publication.

(3) If any amount due and payable under this section is not paid by any party after demand by the Authority, and remains unpaid beyond the time specified for payment, the Authority may seize the vehicle or other property of the debtor after giving reasonable notice of such seizure, and may detain such vehicle or property until payment is made.

PART VIII—MISCELLANEOUS

69. Before making or revoking a declaration under section 55, the Cabinet Secretary shall—

Consultation before declaration.

- (a) notify each county government which, in the opinion of the Cabinet Secretary's would be affected by the proposed declaration or revocation; and

- (b) give the county governments a reasonable opportunity to make submissions to the Cabinet Secretary on the proposed declaration or revocation.

70. An Authority may exercise, for a National trunk road in the area of a county government, all of the powers that the county government may exercise for a county road in the area.

Authority to have power of a county government for National trunk roads.

71. (1) An Authority or a county government may transfer any function relating to roads in accordance with the provisions of Article 187 of the Constitution and Part III of the Intergovernmental Relations Act, 2012.

Transfer of functions to either level of government. No. 2 of 2012.

(2) An Authority may, in accordance with the relevant roads implementation program, carry out or enter into contracts on behalf of the National government with other persons including county governments or agencies of the Government for the carrying out of—

- (a) road works on a national trunk road or on land that is intended to become a national trunk road;
- (b) other works that contribute to the effectiveness and efficiency of the road network; or
- (c) the operation of a national trunk road.

(3) The Authority may, carry out road works on a county road in accordance with an agreement between the Authority and the county government.

(4) An agreement between the Authority and a county government under this section on the maintenance and operation of a national trunk road shall comply with the provisions of section 26 of the Intergovernmental Relations Act, 2012 and may include arrangements on the powers of the county government that are to be exercised by the Authority and the powers that are to be exercised by the county government with respect to the national trunk road.

(5) A county government may enter into a contract mentioned in subsection (1) even though the contract relates to works or operation outside the boundaries of that county government.

(6) An Authority may, carry out or enter into contracts for works on or on land adjacent to a national trunk road at

the request of the owner of the land on condition that the owner provides consideration, whether monetary or otherwise, as shall be agreed between the Authority and the owner.

(7) The section does not prevent an Authority from carrying out or entering into contracts for the carrying out of road works of a minor or emergency nature.

72. The Authority may enter into an arrangement with any person including a county government or a national government body or agency for the sharing of the cost of—

Cost sharing arrangements.

- (a) acquisition of land for road transport infrastructure;
- (b) road works on a national trunk road;
- (c) other works that contribute to the effectiveness and efficiency of the road network; or
- (d) the operation of a National trunk road; including all necessary preliminary costs associated with the acquisition, works or operation.

73. (1) An Authority may enter into an agreement with a county government under which the authority supplies funds to the county for road works on a county road, for other works that contribute to the effectiveness and efficiency of the road network or for the operation of a county road.

Funds for works on, or operation of, county roads etc.

(2) The agreement—

- (a) must provide for the works or operation to be carried out in accordance with an agreement between the authority and county government that is designed to ensure value for money in the application of the funds; and
- (b) may be subject to other conditions.

74. If a county government considers that improvements to a national trunk road in its area would be beneficial to the county road network, the county government may make financial arrangements with the relevant/ respective authority for the improvements to be made.

Improvement of National trunk road as an economic alternative to improvement of the county road network.

75. (1) A county government shall obtain the relevant/respective Authority's written approval if—

- (a) it intends to carry out road works on a county road or make changes to the management of a county road where
- (b) the works or changes would—
 - (i) require the carrying out of road works on a national trunk road; or
 - (ii) otherwise have a significant adverse impact on a national trunk road; or
 - (iii) have a significant impact on the planning of a national trunk road or a future national trunk road.

Impact of certain county government decisions on national trunk roads.

(2) Subsection (1) does not apply if the Authority has considered the works or changes as part of consideration of a development application.

(3) An Authority may make guidelines in which county governments must be guided in deciding whether an approval of the authority under subsection (1) is required.

(4) An approval by an Authority under subsection (1) may be subject to conditions, including a condition that consideration, whether monetary or otherwise, be given in compensation for the impact that the road works or changes shall have.

(5) Subsection (1) does not apply if the conditions applied and enforced by the county government for the road works or changes comply with permission criteria set by the Authority.

(6) The permission criteria may include conditions, including a condition that consideration, whether monetary or otherwise, be given in compensation for the impact that the road works or changes shall have.

(7) A county government must comply with conditions that apply to it under this section.

(8) If a county government contravenes subsection (1) or a condition that applies to it under this section, the county government is liable to compensate the Authority for the cost of road works to national trunk roads that are reasonably required as a result of the contravention.

(9) An approval by the chief executive under subsection (1) must be given—

- (a) within twenty-one days after receiving the application for approval; or
- (b) within a longer period notified to the county government by the Authority within the twenty-one days period.

(10) If—

- (a) a county government applies for an approval under subsection (1); and
- (b) the authority does not respond to the application within twenty-one days after receiving the application; the Authority shall be considered to have given approval at the end of the twenty-one days.

(11) In this section—

future national trunk road means a road or land that the Authority has notified the county government in writing is intended to become a national trunk road.

(12) The authority must cause a copy of each notice under subsection (11) to be published in the gazette.

76. (1) A county government may exercise, for a national trunk road in its area, all the powers that it may exercise for a county road in its area:

Provided notification of the actions or powers intended has been provided and consented to by the National Agency with delegated powers over the road.

(2) Despite subsection (1), where there is a contract as specified under section 72 relating to powers of Authority for road works contracts between an Authority and a county government, the exercise of the powers shall be done as required by the contract.

(3) If there is no contract of the kind mentioned in section 72 between the Authority and a county government, an Authority may direct the county government not to exercise any or some of its powers for a national trunk road specified in the direction.

Management of particular functions on National trunk roads by county governments.

(4) A direction under subsection (3) may be subject to conditions.

(5) A county government must comply with directions or conditions under this section.

(6) The exercise of a power by a county government under this section is not a contravention of this Act.

77. The Cabinet Secretary shall oversee the performance of the activities of each Authority, under this Act and may, in writing, give directions on matters of policy not inconsistent with the provisions of this Act.

Cabinet Secretary's power of direction.

78. (1) Except as provided in subsection (2), a person or body may not do any of the following things without the respective Authority's written permission, or contrary to such permission—

Structures and other works on, over and below roads or certain other land.

- (a) erect, construct or lay, or establish any structure or other thing, on, over or below the surface of a road reserve or land in a building restriction area;
- (b) make any structural alteration or addition to a structure or other thing situated on, over or below the surface of a road or road reserve or land in a building restriction area; or
- (c) give permission for erecting, constructing, laying or establishing any structure or other thing on, over, or below the surface of a road or road reserve or land in a building restriction area or for any structural alteration or addition to any structure or other thing so situated.

(2) The Authority may, in its discretion, give or refuse to give any permission under this section.

(3) When giving permission under this section the Authority may prescribe—

- (a) the specifications with which the structure, other thing, alteration or addition for which permission is requested must comply;
- (b) the manner and circumstances in which, the place where, the conditions on which the structure, other thing, alteration or addition may be erected, constructed, laid, established or made; and

- (c) the obligations to be fulfilled by the owner in respect of the land on which the structure, other thing, alteration or addition is to be erected, constructed, laid, established or made.

(4) Where a person, without the permission required by subsection (1), or contrary to any permission given thereof, erects, constructs, lays or establishes a structure or other thing, or makes a structural alteration or addition to a structure or other thing, the Authority may, by notice in writing, direct that person to remove the unauthorized structure, other thing, alteration or addition within a reasonable period which shall be stated in the notice but which may not be shorter than thirty days calculated from the date of the notice.

(5) If the person to whom a notice has been issued in terms of subsection (4) fails to remove the structure, other thing, alteration or addition mentioned in the notice within the period stated therein, such item may be removed by the Authority itself which may recover the cost of the removal from that person.

(6) A person who contravenes any of the provisions under this section commits an offence, and is liable on conviction to a term of imprisonment not exceeding one year or to a fine not exceeding one hundred thousand shillings, or to both.

79. (1) Where a road is damaged—

- (a) by reason of any vehicle passing over it in contravention of the provisions of any regulations made by the respective Authority under this Act; or
- (b) by reason of any vehicle passing over a bridge on the road, or coming into contact with any portion thereof other than the surface of the road, the owner of the vehicle and the person driving or propelling it shall jointly and severally be liable to the Authority for the damage.

Liability of owner and driver for damage.

(2) A certificate under the hand of any person authorized in that behalf by the concerned Authority stating the amount of the cost of making good such damage under subsection (1) shall be *prima facie* evidence of such cost.

80. If at any time it appears to the Cabinet Secretary that any Authority, has failed to comply with any of the provisions of this Act, the Cabinet Secretary may, by notice in writing, require the respective Board to make good the default within such time as may be specified in such notice.

Proceedings on failure to comply with the Act.

81. (1) Notwithstanding anything to the contrary in any other law, a county government, a board of a city or a municipality, a town committee or other person shall not in any way interfere with the control, maintenance, development or protection of any national trunk road except where such power has been delegated by the responsible Authority or by the Cabinet Secretary under this Act.

Exercise of certain powers of delegation under the Act.

(2) Notwithstanding subsection (1), an Authority shall encourage community and private sector participation in road construction, maintenance and management under its supervision and guidance.

82. The Director-General may, by notice in writing, authorize any employee of the respective Authority to maintain order upon any premises occupied by the Authority or on a road or vehicle of the Authority.

Authorization of employees.

83. (1) Where, in the exercise of powers under this Act, an Authority constructs a new road, it shall construct and maintain the following accommodation works for the benefit of the owners and occupiers of lands adjoining those on which the road is constructed-

Accommodation works.

- (a) such access facilities or other works as, in the opinion of the Authority, are necessary for the purpose of making good any interruption caused by the construction of the road to the use of the lands through which the road is constructed; or
- (b) such culverts, drains or other works as, in the opinion of the Authority, are necessary to convey water as freely as is practicable from or to such adjoining lands as was the case before the construction of the road.

(2) Nothing in this section shall require the construction or the maintenance of any accommodation works—

- (a) in such a manner as to prevent or obstruct the proper operation of the road; or

- (b) where the owners or occupiers of the lands or their predecessors in title, have received an agreed amount of compensation in consideration of such works not being constructed or maintained.

(3) Where suitable accommodation works for the crossing of roads or watercourses have been constructed under this section, and such road or watercourse is afterwards diverted by some person other than the Authority, the Authority shall not be required to construct other accommodation works for the crossing of such road or watercourse.

84. Any person who unlawfully—

Major offences.

- (a) does any act which obstructs, or is likely to obstruct the working of any equipment or vehicle belonging to any Authority and used in its operations, and which act endangers or is likely to endanger the life of any person therein;
- (b) damages, or in any way interferes with any road or other property of any Authority in such a manner as to endanger the life of any person;
- (c) does any act which obstructs, or is likely to obstruct the operation of vehicles on any road, or the use of any weighbridge; or
- (d) exceeds axle load limit,

commits an offence, and is liable on conviction to imprisonment for a term not exceeding two years, or to a fine not exceeding one hundred thousand shillings, or to both.

85. Any person who—

Other offences.

- (a) not being specifically authorized in that behalf, or an employee or agent of any Authority, or occupant of a vehicle with justifiable cause to be present, is found during the hours of darkness on any premises occupied by such Authority;
- (b) being on any premises occupied by any Authority, or in a vehicle of the Authority—
 - (i) refuses when called upon by an employee of the Authority or a police officer to give his

- or her name and address, or gives a false name or address with intent to avoid prosecution;
- (ii) is in a state of intoxication, or behaves in a violent or offensive manner to the annoyance of any other person;
 - (iii) commits any act, or otherwise does anything which may cause injury to any person on such premises, or upon such vehicle;
 - (iv) commits any nuisance or act of indecency, or uses profane, obscene, indecent or abusive language;
 - (v) without lawful excuse, contravenes any lawful direction given by any employees of the Authority; or
 - (vi) except with the express permission of the Director-General of the Authority, hawks, sells or exposes for sale any article or goods or service or applies for, or carries on any other trade or business;
- (c) writes, draws or affixes any profane, obscene, indecent, or abusive words, matter, or representative character upon any premises occupied by any Authority, or upon any vehicle of such Authority;
 - (d) defaces the writing on any notice authorized to be maintained upon any premises occupied by any Authority, or upon any equipment or vehicle of such Authority;
 - (e) damages, or without lawful excuse, interferes with any property of any Authority;
 - (f) without lawful excuse, does any act which obstructs, or is likely to obstruct the free movement of vehicles on any road or the use of any road, parking area or related facility; or
 - (g) being a driver or conductor of any vehicle, disobeys lawful instructions while upon premises occupied by any Authority,

commits an offence, and is liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding fifty thousand shillings, or to both.

86. Any person who makes, either knowingly or recklessly, any statement which is false in any material particular in any return, claim or other document which is required to be made for the purpose of any Authority under this Act, commits an offence and is liable on conviction to imprisonment for a term not exceeding three months, or a fine not exceeding ten thousand shillings, or to both.

Penalty for false returns.

87. Notwithstanding anything in this Act or any other written law, the Cabinet Secretary may, by notice in the Gazette, exempt State vehicles or any category of State vehicles from the provisions of this Act or any regulations made under this Act.

Exemption of state vehicles.

88. No action shall lie in respect of nuisance by reason only of the noise and vibration caused by vehicles or construction plant and equipment on a public road.

Nuisance caused by vehicles on roads.

89. (1) Notwithstanding any other provisions of this Act, the Cabinet Secretary may, upon the recommendation of the respective Authority, by notice in the Gazette and on such terms and conditions as may be appropriate, exempt any vehicle, person, road, service or enterprise from the application of any regulations made under this Act, if such exemption is required in the public interest.

Other Exemptions.

(2) The Cabinet Secretary may by regulations delegate the exercise of the powers under subsection (1) to an Authority.

90. Any notice or other document required to be served on an Authority, under this Act may be served—

Service of notice, etc., on Authority.

- (a) by delivery of the notice or other document to the Director-General;
- (b) by leaving it at the office of the Director-General; or
- (c) by sending it by registered post to the Director-General.

91. Where any action or other legal proceeding lies against any Authority, for any act done in pursuance or execution, or intended execution of an order made pursuant

Limitation of actions.

to this Act or of any public duty, or in respect of any alleged neglect or default in the execution of this Act or of any such duty, the following provisions shall have effect—

- (a) the action or legal proceeding shall not be commenced against the Authority until at least one month after written notice containing the particulars of the claim and of intention to commence the action or legal proceedings has been served upon the Director-General by the plaintiff or their agent; and
- (b) such action or legal proceedings shall be instituted within twelve months next after the act, neglect, default complained of or, in the case of a continuing injury or damage, within six months next after the cessation thereof.

92. Notwithstanding anything to the contrary in any law—

- (a) where any judgment or order has been obtained against any Authority, no execution or attachment, or process in the nature thereof shall issue, but the Director-General shall without delay, cause to be paid out of the revenue of the Authority, such amounts as may, by the judgment or order, be awarded against the Authority; or
- (b) no property of the Authority, shall be seized or taken by any person having by law power to attach or detain property without the prior written permission of the Director-General.

Restriction on execution against property.

93. A person who, without the written approval of the Authority assumes for the purposes of business, or registers in terms of any written law relating to companies or business names under the names—

Protection of name.

“Roads Authority”, commits an offence, and shall be liable on conviction to imprisonment for a term not exceeding six months, or a fine not exceeding two hundred thousand shillings, or to both.

94. (1) In the performance of its functions or exercise of its powers under this Act, each Authority shall, where appropriate, consult with the Cabinet Secretary, other departments, bodies or persons and users of its facilities and services.

Consultation with departments and users.

(2) An Authority, may establish such consultative mechanism as it considers appropriate under this section to obtain the views of the users of its facilities and services.

95. Each Authority shall be entitled, upon application to the Cabinet Secretary responsible for finance, to exemption from duty chargeable under the law relating to payment of stamp duty in respect of any instrument executed by or on behalf of, or in favour of the Authority, which, but for this section, would be liable to pay.

Exemption from stamp duty.

96. (1) Each Authority shall publish and publicise all important information within its mandate.

Publication and access to information.

(2) A request for information in the public interest by a citizen—

- (a) shall be addressed to the Director-General, such other person as the Authority may for the purpose designate, and may be subject to the payment of a reasonable fee in instances where the Authority, incurs an expense in providing the information; and
- (b) may be subject to confidentiality requirements of the Authority.

(3) Subject to Article 35 of the Constitution, an Authority, may decline to give information to a person where—

- (a) the request is unreasonable in the circumstances;
- (b) the information requested is at a deliberative stage by the Authority;
- (c) failure of payment of the prescribed fee; or
- (d) the person fails to satisfy any confidentiality requirements determined by the Authority.

(4) The right of access of information under Article 35 of the Constitution is limited to the nature and extent specified under this section.

(5) Every employee of each Authority shall sign a confidentiality agreement.

97. A person convicted of an offence under this Act for which no penalty is provided shall be liable on conviction to a fine of not less than one hundred thousand

General penalty.

shillings or to imprisonment for a term not exceeding two years, or to both.

98. (1) The Cabinet Secretary may, in consultation with the respective Authority make Regulations for the better carrying out of the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the Regulations may provide for—

- (a) the manner in which all public roads shall be classified;
- (b) guidelines for public-private sector partnerships in development projects including guidelines on ownership of assets, equity, participation, sharing of returns, community participation in future earnings from the project, compensation mechanisms and payment of fees;
- (c) the use, safety or maintenance of the roads falling within its responsibility;
- (d) the erection of structures on, near, over or under the roads falling within its responsibility;
- (e) the drainage of streets, lands, compounds and buildings adjacent to the road;
- (f) the level, width and construction of roads and streets;
- (g) the removal, demolition or alteration of any projection, structure or thing obstructing a road or likely to cause damage or inconvenience to road users;
- (h) the fees payable for services provided by the Authority, or the Roads Board or the manner of their application;
- (i) monitoring and evaluation mechanisms for projects undertaken under this Act;
- (j) the holding of joint meetings of the Boards of the Authorities, or the Roads Board;
- (k) the detention of vehicles; and
- (l) road numbering and signage system.

(3) The power to make Regulations conferred under this Act shall be—

- (a) for the purpose and objective of giving effect to the Constitution and this Act;
- (b) limited to the nature and scope specifically stipulated in the Constitution and this Act; and
- (c) based on the general principles and standards contained in the Constitution and this Act.

(4) Regulations made under subsection (1) may prescribe, in respect of any contravention of any provision thereof, a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding one year or both, and may also prescribe, in the case of continuing offences, an additional penalty in respect of each day in which the offence continues.

99. The Cabinet Secretary shall review and revoke all legal notices establishing the former authorities, and departments whose functions, by virtue of this Act, falls under the purview of the powers and functions of an Authority, in order to enable the transfer of the functions, assets, and liabilities of the former authorities to the respective Authority, as contemplated under this Act.

Review and revocation of certain legal notices.

PART IX—RESPONSIBILITIES OF COUNTY GOVERNMENTS

100. (1) Each county government shall, within its area of jurisdiction, be responsible for the construction and maintenance of the county roads in accordance with the provisions of Part 2 of the Fourth Schedule to the Constitution and Part B of the First Schedule to this Act.

Respective roles of national and county governments.

(2) For the purposes of discharging its responsibility, each county government shall undertake the following functions and duties —

- (a) constructing, upgrading, rehabilitating and maintaining county roads;
- (b) managing reserves and facilitating access to roadside developments with respect to county roads;
- (c) implementing road policies in relation to county roads;
- (d) ensuring adherence to the rules and guidelines on axle load control as prescribed under the Traffic Act and any Regulations made under this Act;

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- (e) ensuring that the quality of county road works is in accordance with national standards issued by the Cabinet Secretary;
- (f) overseeing the management of traffic and road safety on county roads in collaboration with the county government;
- (g) collecting and collating all such data related to the use of county roads as may be necessary for efficient planning under this Act;
- (h) monitoring and evaluating the use of county roads;
- (i) planning the development and maintenance of county roads;
- (j) preparing the county investment programme and annual county road works programmes for county roads; and
- (k) co-ordinating with road Authorities or agencies in planning and operations in respect of county roads.

(3) The national government shall, in accordance with Part 1, section 18 of the Fourth Schedule to the Constitution, be responsible for the standards for the construction and maintenance of county roads by county governments.

(4) Each county government shall, for the purposes of ensuring uniformity and national standards in the roads sector, through its legislation and administrative action, implement and act in accordance with the national policy, standards and guidelines issued by the Cabinet Secretary under this Act.

(5) Any action required under this Act to be done by the county government shall be deemed to have been done if done by an officer of the county government authorized by the government in that behalf.

101. For purposes of this Part, each county government shall by county legislation establish a County Roads Agency being either a department or division which shall be responsible for the management, development and maintenance of County Roads under the county executive in charge of roads.

County governments to establish County Roads Agencies.

PART X—TRANSITIONAL PROVISIONS

102. (1) In this Part—

Transitional
provision.

“appointed day” means the day on which this Act comes into force;

“assets” include all property movable or immovable and all estates, easements and rights whether equitable or legal in, over or out of property, choses-in-action, money or goodwill of the former institutions whether situated in Kenya or elsewhere;

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“former Authorities” means the following former Authorities established by Kenya Roads Act, 2007, existing immediately before the appointed day —

- (a) Kenya National Highways Authority;
- (b) Kenya Rural Roads Authority; and
- (c) Kenya Urban Roads Authority;

“former boards” means the boards of the following former Authorities, existing immediately before the appointed day—

- (a) Kenya National Highways Authority;
- (b) Kenya Rural Roads Authority; and
- (c) Kenya Urban Roads Authority;

“liabilities” means liabilities, debts, charges, duties and obligations of every description, whether present or future, actual or contingent, and whether to be observed or performed in Kenya or elsewhere;

“rights” includes all rights, powers, privileges and immunities whether actual, contingent or prospective, whether observed or performed in Kenya or elsewhere;

(2) Notwithstanding the provisions of section 32, persons who immediately before the commencement of this Act were employees of the former Roads Authorities shall, upon the commencement of this Act, be deemed to be the employees of the Kenya National Highways Authority and Kenya National Secondary Roads Authority.

(3) The Board may establish a pension scheme for the staff of the Authority.

(4) Until a Board establishes a pension scheme under this Act or any other written law—

- (a) the members of staff of the former authorities who become members of staff of the Authorities established under this Act shall continue to be governed by the existing pension scheme; and
- (b) where any person whose services are transferred to an Authority, under this section is, on the appointed day, a member of any statutory voluntary pension scheme or provident fund, the person shall for the purpose of this Act, continue to be governed by the same regulations under those schemes or funds, as if the person had not been so transferred, and for purposes of the regulations governing those schemes or funds, service with the Authorities under this Act, shall be deemed to be service in the former authority.

(5) Upon the commencement of this Act—

- (a) the former boards of the Kenya National Highways Authority, the Kenya Rural Roads Authority and the Kenya Urban Roads Authority shall stand dissolved on the appointed date;
- (b) all the rights, duties, obligations, assets, liabilities and staff of the former authorities existing at the commencement of this Act shall be automatically and fully transferred to the respective Authority;
- (c) any reference to any of the former authorities in any written law, contract, document or instrument of any nature shall, on the commencement of this Act, be read and construed as a reference to the respective Authority;
- (d) the consolidated annual estimates of the former Kenya Urban Roads Authority, and the former Kenya National Highways Authority for the financial year in which this Act commences shall be deemed to be the annual estimates of the Kenya National Highways Authority under this Act and the annual estimates of the former Kenya Rural Roads Authority, shall be deemed to be the annual estimates of the Kenya National Secondary Roads Authority for the remainder of that financial year;

- (e) any administrative direction made by any of the former authorities which was in force immediately before the commencement of this Act shall, as long as they are consistent with this Act, have force as if it was a direction made under this Act by the respective Authority, as the case may be;
- (f) all contracts, deeds, bonds, agreements, arrangements, guarantees and other instruments made or entered into, on behalf of, or in relation to the former authorities, shall have effect as if made or entered into by, on behalf of or in relation to, the respective Authority, as the case may be; and
- (g) all actions, claims, arbitrations, applications and other proceedings, including proceedings on appeal or review, pending or existing immediately before the commencement of this Act, by, against, or in relation to any of the former authorities, or former boards shall have effect as if they were proceedings by, against, or in relation to the respective Authority, as the case may be, and may be continued and completed accordingly.

103. The Kenya Roads Act, 2007 is repealed.

104. The Acts specified in the Third Schedule are amended in the manner specified in that Schedule.

Repeals.
Cap.408.
Consequential
amendments to
other Acts

FIRST SCHEDULE

(s .10)

CLASSIFICATION OF PUBLIC ROADS

All public roads in Kenya shall be classified as follows –

PART A—NATIONAL TRUNK ROADS

Category	Class	Description
Primary National Trunk Roads	Class S	Highways connecting two or more cities meant to carry safely a large volume of traffic at the highest legal speed of operation.

	Class A	Roads forming strategic routes and corridors, connecting international boundaries at identified immigration entry and exit points and international terminals such as international air or sea ports.
	Class B	Roads forming important national routes, linking national trading or economic hubs, County headquarters and other nationally important centres to each other and to the national capital or to Class A roads.
	Class H	Urban major arterials highways meant to carry through traffic and relatively long distance traffic between widely separated parts of the city or municipality. They are required to provide mobility within an urban area as opposed to access.
	Class J	Minor arterials meant to carry traffic between different zones of the urban area and include the principal urban bus routes. They shall include, roads within economic zones that are planned by the National Government and roads within State Houses and Lodges including their access roads. They are required to provide mobility as opposed to access.
Secondary National Trunk Roads	Class C	Roads forming important regional routes, linking County headquarters or other regionally important centers, to each other and to Class A or B roads. Required to collect regional and local traffic and channel it to class A and B roads.
	Class D	Roads linking constituency headquarters, Municipal or Town Council Centers and other towns to each other and to higher class roads. Required to collect local traffic from lower class roads and channel it to the higher class roads.

PART B—COUNTY ROADS

Class	Description
Class E	Major Feeder Roads linking important Constituency centres to each other and meant to carry local traffic and to channel it to class D roads.

Class F	Minor Feeder Roads linking Market Centres to each other. Meant to carry and to channel it to class E roads.
Class G	Roads linking farms to markets and meant to carry farm produce and farm inputs traffic to and from the markets
Class K	Urban major collector roads meant to collect traffic from the local roads and channel it to the major and minor arterial roads. The roads are meant to provide for both mobility and access.
Class L	Urban minor collector roads meant to perform a similar function as the class K roads i.e. to collect traffic from the local roads and channel it to the arterial roads, but in a smaller catchment's area meant to collect traffic from the local roads and channel it to class K roads. The roads are meant to provide both mobility and access.
Class M	Main business and shopping streets in the urban areas meant to provide access to commercial properties and residential areas and also cater for a high level of pedestrian traffic.
Class N	Provide direct access to individual or group of properties, and residential areas, or to places of specific social or economic activity, including industrial and commercial areas and government institutions such as school, hospital, prisons and government housing.
Class P	Provide direct access to groups of residential properties. This is the lowest class of public roads and therefore Class P roads will provide all other public access (e.g. access to social amenities such as schools, hospitals, etc) not provided by higher class roads.

SECOND SCHEDULE

(s. 40)

PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF A BOARD

Meetings.

1. (1) The Board shall have at least four meetings 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.

(2) Meetings shall be convened by the secretary to the Board in consultation with the Chairperson, and shall be held at such times and such places as the Chairperson shall determine.

(3) The Chairperson shall preside over all meetings, and in the absence of the Chairperson, by a person elected by the Board, at the meeting for that purpose.

(4) The Chairperson may at any time convene a special meeting of the Board or shall do so within one month of receipt by the Chairperson of a written request signed by at least five other members.

(5) Unless five members of the board otherwise agree, at least seven days' notice of a meeting shall be given to every member.

Quorum. 2. The quorum of a meeting of the Board shall be five members.

Voting. 3. A decision of the Board shall be by a majority of the members present and voting and, in the case of an equality of votes; the person presiding at the meeting shall have a second or casting vote.

Minutes. 4. Minutes of all meetings shall be kept and entered in records kept for that purpose.

Application of the State Corporations Act 5. The provisions of this Act shall apply on the conduct of business of the Board where such provisions are not provided for under this Schedule.

Disclosure of interest by members. 6. (1) If a person is present at a meeting of the Board or any committee thereof at which any matter is the subject of consideration, and in which matter that person is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, declare such interest.

(2) The person making the disclosure of interest under subparagraph (1) shall not, take part in any consideration or discussion of, or vote on any question relating to that matter, unless the Board as the case may be, or the committee otherwise directs.

(3) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(4) A person who contravenes sub paragraph (1) commits an offence under this Act, and is liable on conviction to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding seven years, or to both.

(5) Any member of the Board, or any employee of the Authority, shall not transact any business or trade with the Board, an Authority, as the case may be.

THIRD SCHEDULE

(s.104)

CONSEQUENTIAL AMENDMENTS

The Kenya Roads
Board Act
No. 7 of 1999.

s.2 Delete the definition of “Highways Authority”, “Rural Roads Authority” and “Urban Roads Authority” and substitute therefor the following new definitions in their proper alphabetical order—

“Highways Authority” means the Kenya National Highways Authority;

“Secondary Roads Authority” means the Kenya National Secondary Roads Authority; and

“Urban Roads Authority” means the Kenya National Urban Roads Authority.

S. 6(2)(d) Delete and substitute therefor with the following;—

Determine the allocation of the Fund to ensure that not more than—

(1) Thirty five (35%) per centum is allocated to the Kenya National Highways Authority in such proportions as the Board may determine with the approval of the Cabinet Secretary in respect of primary national trunk roads Classes S,A and B;

(2) Thirty (30%) per centum is allocated to the Kenya National Secondary Roads Authority in respect of secondary national trunk roads and the said per centum shall be equally distributed to the Constituencies;

(3) Ten (10%) per centum is allocated to the National Urban Roads Authority

(4) Fifteen (15%) per centum is allocated to the county governments equally in respect of county roads;

(5) One (1%) per centum is allocated to the Kenya Wildlife Services in respect of roads in national parks and reserves;

(6) Six (6%) per centum is allocated annually by the Board with the approval of the Cabinet Secretary to priority projects derived from the road investment programmes including support road standards, technical assistance and shall include—

(a) One (1%) per centum for material development; and

(b) One (1%) per centum for research and testing.

(7) One (1%) per centum to be allocated to the National Transport and Safety Authority to support road safety programmes; and

(8) Two (2%) per centum to the Kenya Roads Board in respect of the recurrent expenditure of the Board.

s.6(2)(e) Delete

s.6(6)(2)j Delete and substitute therefor with the words “With the approval of the Cabinet Secretary set the Fuel levy rate.

s6(2)(i) Delete and replace with the following—

Each Authority may utilize such portion of monies received from the Fund for operational and administrative expenses as may be recommended by the Board and approved by the Cabinet Secretary.

s. 6
(2)(1)(ii) Delete the words Kenya Rural Roads Authority and substitute therefor with the words “Kenya National Secondary Roads Authority”.

s.6(2) Insert the following immediately after subsection (2) (1)—

(j) co-ordinate the implementation of all policies relating to road maintenance in Kenya;

(k) develop and maintain an updated road network register;

(l) advise the Cabinet Secretary on—

(i) road classification;

(ii) research and studies necessary for promoting road maintenance and development; and

(iii) road network performance.

s.17 Delete the word “Kenya Rural Roads Authority” wherever it appears and substitute therefor with “Kenya National Secondary Roads Authority”.

s.17
(2)(c) Delete the word “Kenya Rural Roads Authority” wherever it appears and substitute therefor with “Kenya National Secondary Roads Authority”.

s.17
(2)(e) Delete the word “District” and substitute therefor with the word “County”

s.17
(3)(4) Delete the word “Kenya Rural Roads Authority” wherever it appears and substitute therefor with “Kenya National Secondary Roads Authority”.

s.17A Delete the word “Kenya Rural Roads Authority” wherever it appears and substitute therefor with “Kenya National Secondary Roads Authority”.

s.32 Insert the following—

(1) The Board may with the approval of the Cabinet Secretary and the Cabinet Secretary for National Treasury borrow such monies as may be required by it for proper discharge of its functions under this Act.

The Board may in consultation with the Cabinet Secretary and with the approval of the Cabinet Secretary for National Treasury, where it may be necessary to meet the financial demands for road maintenance set aside a portion of the fund for purposes of securing additional income.

Third
Schedule Delete and Substitute therefor with the following—

(1) Kenya National Highways Authority

(1A) Kenya National Urban Roads Authority

(2) Kenya National Secondary Roads Authority

(3) Kenya Wildlife Services

(4) such body or department established by each county government to maintain county roads with the Fund.

The Physical
Planning Act, 1996
No.6 of 1996.

s.2

Delete the definition of “Kenya National Highways Authority”, “Kenya Rural Roads Authority” and “Kenya Urban Roads Authority” and substitute therefor the following—

“Highways Authority” means the Kenya National Highways Authority established under section 12 of the Kenya Roads Act;

“Secondary Roads Authority” means the Kenya National Secondary Roads Authority established under section 19 of the Kenya Roads Act;

“Urban Roads Authority” means the Kenya National Urban Roads Authority established under section 17 of the Kenya Roads Act.

s.8(1)

Delete paragraphs (na), (nb) and (nc) and substitute therefor with the following new paragraphs—

(na) the Director-General of the Kenya National Highways Authority established under section 14(2)(e) of the Kenya Roads Act;

(nb) the Director-General the Kenya National Secondary Roads Authority established under section 20(2)(e) of the Kenya Roads Act.

(nc) the Director-General of the Kenya National Urban Roads Authority established under section 17 (1) (e) of the Kenya Roads Act.

s. 8 (2)

Delete paragraph (k)

s.8 (3)

insert the following new paragraph immediately after paragraph (e)—

(ea) a representative of the Kenya National Urban Roads Authority;

Delete paragraph (f) and substitute therefor the following new paragraph—

(f) a representative of the Kenya National

Highways Authority;

s. 8(4) Delete paragraph (f) and substitute therefor the following—

“(f) a representative of the Kenya National Secondary Roads Authority .”

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to give effect to the Fourth Schedule to the Constitution in relation to the roads subsector. It is proposed to review, consolidate and rationalize the legal and institutional framework for management of the road network and roads sub sector in a more efficient and effective manner. With this object it is also proposed to amend the Kenya Roads Board Act, 1999(Cap. 408A), repeal the Kenya Roads Act 2007 (Cap. 408), and the Public Roads and Roads of Access Act, 1920 (Cap. 399).

Part I — provides for the short title and commencement, interpretation, the purpose of the Act and guiding principles.

Part II — provides for the establishment of the Public Roads Standards Board.

Part III— provides for classification of national trunk and county roads and assignment of roads.

Part IV — provides for the establishment and composition of the Kenya National Highways Authority, Kenya National Secondary Roads Authority, and the managing Boards of these Authorities, powers and functions of these Boards.

Part V—provides for procedure for appointment of Chairperson, other members and Director-General, qualifications and appointment of Chairperson and members. It also includes provisions for committees of the Board, term of office, remuneration of members, meetings of the Board, removal from office, vacation of office and filling of vacancy of office of members, etc. of the Authority. This Part includes provisions on board of directors, removal of the Director-General, employees of the Authority, power of the Authority to make regulations relating to employees, regulations on employees by the Board and common seal of the Authority.

Part VI— relates to the general powers of the Authority, and provides for acquisition of land for the purposes of the Authority, power to enter land and survey land, power to enter land to prevent accidents etc., power to enter and alter position of pipes etc. from within road reserve, power to take water and compensation where such acquisition is made by or on behalf of the Authority.

Part VII— provides for financial matters. It includes provisions on the financial year, annual estimates, accounts and audits of the Authority. It also provides provisions for development and implementation of a roads sector investment programme and annual works programme. Further, it provides for restriction on expenditure outside the budget, principles for

operation, of levy of fees and charges and their gazettelement, recovery of debts, and annual reports.

Part VIII—deals with miscellaneous matters. It provides for performance agreement, Cabinet’s Secretary power of direction, classification of roads, inventory of roads, structures and other works on, over and below roads on certain other land, liability of owner and driver for damage, proceedings on failure of Authority to comply with the Act, exercise of certain powers of delegation under the Act, authorization of employees etc., accommodation works, additional accommodation works, major offences, other offences, false returns, application of regulations to state vehicles, detention of vehicles, nuisance caused by vehicles on roads, exemption, service of notice, etc., on the Director-General, service of notice, etc., by Authority, limitation of actions, restriction on execution against property of Authority, protection of name, consultation with departments and users, protection from personal liability, exemption from stamp duty, publication and access to information, general penalty, regulations rules making power of the Cabinet Secretary, review and revocation of certain legal notices, and repeals.

Part IX—provides for responsibilities of County Governments.

Part X—provides for transitional provisions in relation to former Authorities.

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

This law when enacted will confer the Cabinet Secretary for the time being responsible for matters relating to roads and each Authority the authority to make provisions having the force of law in Kenya.

Under section 38 of this Act, each Authority is given powers to make regulations relating to the conditions of service of its employees.

Section 54 of this Act bestows powers to the Cabinet Secretary for the time being responsible for matters relating to roads to make regulations for the better carrying out of the provisions of section 54 of this Act.

Under section 56 of this Act, the Cabinet Secretary responsible for finance may, in consultation with the Cabinet Secretary, make Regulations authorizing the imposition and collection of road user charges by the Authority in respect of roads, including national and county roads.

Under section 98 of this Act, the Cabinet Secretary responsible for roads has been given powers, in consultation with the respective Authority, to make regulations for the better carrying out of the provisions of this Act.

Limits of Delegated Authority

The regulations made under section 38 of this Act shall be limited to—

- (a) the appointment, dismissal, discipline, pay and leave of, and the security to be given to its staff;
- (b) appeals by officers and staff against dismissal or other disciplinary measures; and
- (c) the establishment and maintenance of medical benefits and loan funds, and the contributions payable thereto and the benefits recoverable there from.

The regulations made under section 56 of this Act shall be limited to—

- (a) charges related to the weight of the vehicle, including exemption from charges for vehicles below a minimum weight;
- (b) exemptions for classes of vehicles whose purpose or design means they are unsuitable for regular road use, or for vehicles used primarily off-road;
- (c) any other provision necessary or desirable for the equitable distribution of the burden of the charge on road users;
- (d) a requirement that road users subject to the charge must be licensed;
- (e) the requirement that vehicles carry distance recorders;
- (f) the allocation by the Roads Fund of the net proceeds of the charges among national and county roads; and
- (g) any other matter necessary or desirable in connection with administration and imposition, collection and enforcement of charges.

The regulations made under section 98 of this Act shall be limited to—

- (a) the manner in which all public roads shall be classified;
- (b) guidelines for public-private sector partnerships in development projects including guidelines on ownership of assets, equity, participation, sharing of returns, community participation in future earnings from the project, compensation mechanisms and payment of fees;
- (c) the use, safety or maintenance of the roads falling within its responsibility;

- (d) the erection of structures on, near, over or under the roads falling within its responsibility;
- (e) the drainage of streets, lands, compounds and buildings adjacent to the road;
- (f) the level, width and construction of roads and streets;

Statement as to whether the Bill concerns county governments

This Bill is a Bill concerning county governments, and is an ordinary Bill.

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

The Bill is not a money Bill for the purposes of Article 114 of the Constitution as the enactment of this Bill will not occasion additional expenditure of public funds as the interventions are provided for in the estimates.

Dated the 24th November, 2017.

ADEN DUALE,
Leader of Majority Party.