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REPUBLIC OF KENYA



TWELFTH PARLIAMENT- THIRD SESSION

THE NATIONAL ASSEMBLY

PARLIAMENT
OF KENYA
LIBRARY

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS
AND HOUSING

REPORT ON THE CONSIDERATION OF THE SENATE AMENDMENTS
TO THE KENYA ROADS BILL, 2017
(NATIONAL ASSEMBLY BILL NO. 47 OF 2017)

THE NATIONAL ASSEMBLY	
PAPERS LAID	
DATE: 12 MAR 2019	DAY: Thursday
TABLED BY: <i>Chesha</i>	De on Public Works & Housing
CLERK-AT-THE-TABLE: <i>Chesha</i>	

DIRECTORATE OF COMMITTEE SERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

MARCH 2019

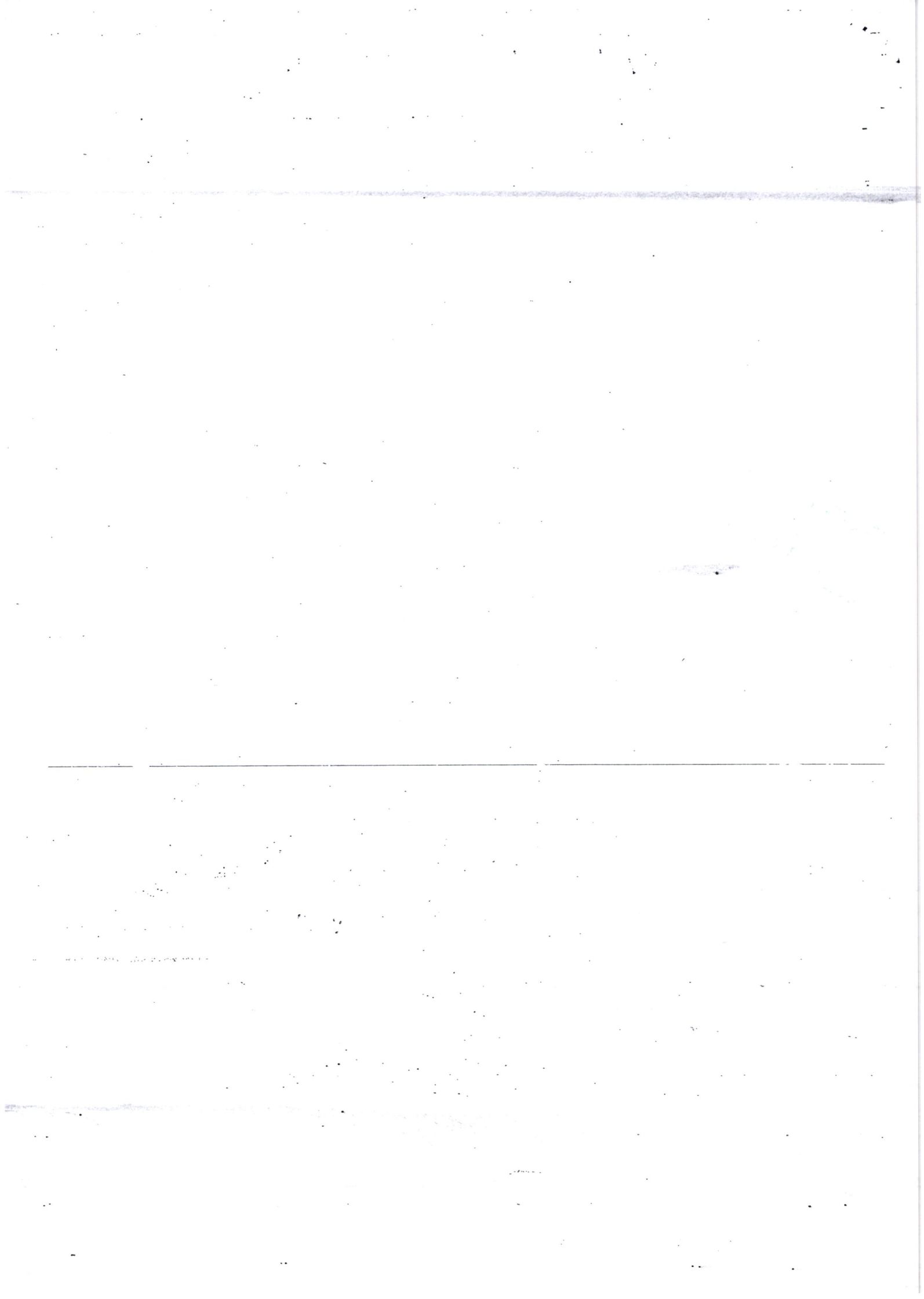


TABLE OF CONTENTS

CHAIRPERSON' S FOREWORD	2
1.0 PREFACE	3
1.1 Mandate of the Committee	3
1.2 Members of the Committee	5
1.3 Committee Secretariat	5
2.0 BACKGROUND	6
3.0 CONSIDERATION OF THE SENATE AMENDMENTS TO THE KENYA ROADS BILL, 2017.....	6
Committee Amendments	6
4.0 COMMITTEE RECOMMENDATION	18

CHAIRPERSON'S FOREWORD

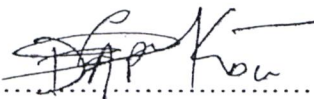
The Bill was read for the first time on 14th December, 2017 and subsequently committed to the Committee pursuant to the provisions of Standing Order 127 (1). Upon its consideration by the National Assembly, the bill was passed and forwarded to the Senate on 14th May, 2018 for consideration.

On 14th February 2019, the Senate passed the Kenya Roads Bill (National Assembly Bill No. 47 of 2017) with amendments. It is on this basis that, on 21st February, 2019, the Bill was referred back to the National Assembly for concurrence through a message from the Senate.

The Committee has considered the Senate amendments to the Kenya Roads Bill, 2017 (National Assembly Bill No. 47 of 2017) and makes this report which contains its decision on the same.

Pursuant to provisions of Standing Order 199 (6), and on behalf of the Departmental Committee on Transport, **Public Works and Housing**, it is my pleasant privilege and honor to present to this House the Report of the Committee on its consideration of the Senate amendments to the Kenya Roads Bill, 2017 (National Assembly Bill No. 47 of 2017).

SIGNED



HON. DAVID PKOSING, CBS, M.P

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING

1.0 PREFACE

1.1 Mandate of the Committee

The Departmental Committee on Transport, Public Works and Housing is established under Standing Order 216(1) whose mandate, pursuant to the Standing Order 216 (5), is as follows;

- a. investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b. study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- c. study and review all legislation referred to it;
- d. study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e. investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f. to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, **except those under Standing Order 204 (Committee on Appointments)**;
- g. examine treaties, agreements and conventions;
- h. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- i. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- j. consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- k. examine any questions raised by Members on a matter within its mandate.

Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects:-

- a) Transport;
- b) Roads;
- c) Public works;
- d) Construction and maintenance of roads, rails and buildings;
- e) Air and seaports; and
- f) Housing.

In executing this mandate, the Committee oversees various State Departments, namely:

- i. The State Department of Transport;
- ii. The State Department of Infrastructure;
- iii. The State Department of Housing and Urban Development;
- iv. The State Department of Public Works; and
- v. The State Department of Shipping and Maritime Affairs.

1.2 Members of the Committee

- 1) Hon. David Pkosing, M.P. Chairperson
- 2) Hon. Moses Kuria, M.P. Vice Chairperson
- 3) Hon. Johnson Many Naicca, M.P.
- 4) Hon. Peris Pesi Tobiko, M.P.
- 5) Hon. Samuel Arama, M.P.
- 6) Hon. Savula Ayub Angatia, M.P.
- 7) Hon. Suleiman Dori Ramadhani, M.P.
- 8) Hon. Ahmed Abdisalan Ibrahim, M.P.
- 9) Hon. Ahmed Bashane Gaal, M.P.
- 10) Hon. Dominic Kipkoech Koskei, M.P.
- 11) Hon. David Njuguna Kiaraho, M.P.
- 12) Hon. Gideon Mutemi Mulyungi, M.P.
- 13) Hon. Kulow Maalim Hassan, M.P.
- 14) Hon. Mugambi Murwithania Rindikiri, M.P.
- 15) Hon. Rigathi Gachagua, M.P.
- 16) Hon. Rehema Dida Jaldesa, M.P.
- 17) Hon. Shadrack John Mose, M.P.
- 18) Hon. Tom Mboya Odege, M.P.
- 19) Hon. Vincent Kemosi Mogaka, M.P.

1.3 Committee Secretariat

- | | |
|-----------------------------|-----------------------|
| 1) Ms. Chelagat Tungo Aaron | First Clerk Assistant |
| 2) Mr. Ahmed Salim Abdalla | Third Clerk Assistant |
| 3) Ms. Christine Odhiambo | Legal Counsel I |
| 4) Mr. James Muguna | Research Officer III |
| 5) Mr. Collins Mahamba | Audio Officer |
| 6) Mr. Abdinasir Moge Yusuf | Fiscal Analyst I |
| 7) Ms. Zainabu Wario | Sergeant at Arms |

2.0 BACKGROUND

The Kenya Roads Bill, 2017 was read for the first time on 14th December 2017 and subsequently committed to the Departmental Committee on Transport, Public Works and Housing for consideration pursuant to the provisions of Standing Order 127 (1), and report to the House. The Committee tabled its report on 20th February 2018. The National Assembly considered the bill before it was passed on 14th May 2018 after which it was forwarded to the Senate for consideration. On 14th February 2019, the Senate passed the Bill with amendments and subsequently referred back to the National Assembly for concurrence.

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.

3.0 CONSIDERATION OF THE SENATE AMENDMENTS TO THE KENYA ROADS BILL, 2017

The Committee considered the Senate amendments to the Kenya Roads Bill, 2017 in its sitting held on Tuesday, 5th March, 2019 and adopted its report on Friday, 8th March 2019 in line with Article 112 (1) (b).

Committee Amendments

The Committee considered the Senate amendments to the Kenya Roads Bill (National Assembly Bill No. 47 of 2017) and resolved as follows—

CLAUSE 2

THAT clause 2 of the Bill be amended by deleting the definition of “public roads” and substituting therefor the new definition-

“Public Road” means all roads falling under the classifications under Schedule I and any other subsequently classified roads”.

The Committee rejected the proposed amendment.

Justification: The definition as proposed by the Senate is narrow as it leaves out “thoroughfares” from the definition of a public road, as opposed to the National Assembly definition which is all-inclusive and makes reference to the definition as contained in an already existing Act, the Public Roads and Roads of Access Act, Cap. 399.

CLAUSE 4

THAT clause 4 of the Bill be amended by inserting the words “and a county roads agency” immediately after the words “an Authority”

The Committee agreed to the proposed amendment.

Justification: The amendment seeks to include a county roads agency to be among the institutions to be guided by the guiding principles under the Act.

CLAUSE 7

THAT clause 7 of the Bill be amended in sub-clause

(1)—

- (a) by deleting the word “and” appearing immediately after the words “research on roads”;
- (b) by inserting the word “and” immediately after the words “the National Transport and Safety Authority”;
- (c) by inserting the following new paragraph—
 - “(k) the Council of Governors.”
- (d) By inserting the following new paragraph immediately after paragraph (j)—
 - “(k) the Law Society of Kenya”

The Committee agreed to the proposed amendments in paragraphs (a), (b) and (c).

The Committee rejected the proposed amendment in paragraph (d).

Justification: It is important to include a representative of the county governments since the mandate of the Standards Board, in advising the Cabinet Secretary on the standards for road and maintenance of public roads will involve county roads which is a function of the county governments.

The Committee however rejected the inclusion of a representative of the Laws Society of Kenya since the Public Roads Standards Board is a technical Board which deals with matters related to the construction and maintenance of roads.

CLAUSE 9

THAT clause 9 of the Bill be amended in sub-clause (1) by inserting the words “in consultation with the Council of Governors” immediately after the words “Cabinet Secretary”.

The Committee rejected the proposed amendment.

Justification: The Fourth ~~Schedule to the~~ Constitution, in paragraph 18(b) and (c) provides that the construction and operation of national trunk roads, as well as the standards for the construction and maintenance of other roads by counties, is a national government function. It is therefore not necessary for the Cabinet Secretary to consult with the Council of Governors in developing such regulations. Further, the county governments will be represented in the membership of the Board, and this provides an avenue for the county governments to be involved in the setting of standards for road construction and maintenance.

CLAUSE 10

THAT clause 10 of the Bill be amended—

(a) in sub-clause (2)—

(i) by deleting the word “and” appearing immediately after the word road in paragraph (a);

(ii) by inserting the words “;and” immediately after the words “county road”

(iii) by inserting the following paragraph immediately after paragraph (b)—

“(c) there is uniformity in the classification of roads.”

(b) in sub-clause (3) by inserting the words, “in consultation with the relevant county government” immediately after the words “Cabinet Secretary” in the introductory phrase.

The Committee rejected the proposed amendments.

Justification: The proposed new paragraph (c) is superfluous as paragraph (a) will ensure that as the Cabinet Secretary classifies roads to accurately reflect the function served by the road, uniformity in the classification of roads will be achieved.

Further, the classification of public roads is a national government function and therefore it is not necessary that the Cabinet Secretary consults the county governments in discharging this function.

CLAUSE 12

THAT clause 12 of the Bill be amended in sub-clause (3) by deleting the words “in each county” appearing immediately after the words “administrative offices”.

The Committee agreed to the proposed amendment.

Justification: The deletion of the words “in each county” is necessary so as to remove any ambiguity and also to guard against abuse which may result by the Authority establishing offices in each county, which might not be necessary.

CLAUSE 14

THAT clause 14 of the Bill be amended in sub-clause (2) by inserting the following new sub-paragraph immediately after sub-paragraph (ii) in paragraph (f)–

“(iii) the Law Society of Kenya”

The Committee rejected the proposed amendment.

Justification: The administrative offices of government agencies are equipped with adequate personnel which includes a legal department, which can provide the Board of the Authority with the relevant legal expertise. It is therefore not necessary to include a representative of the Law Society of Kenya in the Board.

CLAUSE 17

THAT clause 17 of the Bill be amended in sub-clause (2) by inserting the following new sub-paragraph immediately after sub-paragraph (ii) in paragraph (f)–

“(iii) the Law Society of Kenya”

The Committee rejected the proposed amendment.

Justification: The administrative offices of government agencies are equipped with adequate personnel which includes a legal department, which can provide the Board of the Authority with the relevant legal expertise. It is therefore not necessary to include a representative of the Law Society of Kenya in the Board.

CLAUSE 20

THAT clause 20 of the Bill be amended in sub-clause (2) by inserting the following new sub-paragraph immediately after sub-paragraph (ii) in paragraph (f)–

“(iii) the Law Society of Kenya”

The Committee rejected the proposed amendment.

Justification: The administrative offices of government agencies are equipped with adequate personnel which includes a legal department, which can provide the Board of the Authority with the relevant legal expertise. It is therefore not necessary to include a representative of the Law Society of Kenya in the Board.

CLAUSE 44

THAT clause 44 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2) —

“(3) The Authority in exercising its powers under this section shall seek consultation and approval of the relevant county government.”

The Committee rejected the proposed amendment.

Justification: Sub-clause (2) already provides for the consultation aspect with the relevant bodies, by providing for the requirement of giving reasonable notice.

CLAUSE 47

THAT clause 47 of the Bill be deleted and substituted therefor with the following new clause:

Power to take water 47. An Authority may for its purposes and in consultation with the relevant county government, take water from any watercourse subject to the Water Act.

The Committee rejected the proposed amendment.

Justification: Clause 47 already provides that the power to take water from a natural watercourse shall be guided by the Water Act, which the Authority shall be bound to comply with in matters of consultation.

CLAUSE 48

THAT clause 48 of the Bill be amended—

(a) in sub-clause(5) by inserting the words ‘or any court of law’ appearing immediately after the words ‘National Lands Commission’, and

(b) by inserting the following new sub-clauses appearing immediately after sub-clause (12)—

(13) Roads referred to in sub-section (1) shall not be carried out where they may endanger any rare or threatened species, wildlife migration, water sources or springs or sites of cultural or natural importance

(14) All contemplated roads or road-works in sensitive areas of cultural or natural importance such as wetlands, indigenous forests and historic or prehistoric sites shall require approval from the National Environment Management Authority as per section 42 of the Environmental Management and Co-ordination Act, 1999.

(15) In the event that the proposed road works cannot avoid passing through a protected area, the Authority shall construct overpasses or underpasses to allow wildlife movement at frequent intervals.

(16) With reference to sub-section 15, where overpasses or underpasses cannot be constructed, the Authority shall ensure that fences are erected on both sides of the road.

The Committee rejected the proposed amendment in paragraph (a).

The Committee agreed to the proposed amendments in paragraph (b).

Justification: The Committee is of the view that it would be ideal to give one uniform redress mechanism as opposed to having two mechanisms in place at the same time. This will guard against absurdities that may occur if one litigant goes to court and another to the National Lands Commission.

The Committee agrees to the new sub-clauses (13), (14), (15) and (16) which provide further clarity with respect to the access to material sites.

CLAUSE 52

THAT clause 52 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) —

“(5) Any matter brought to the Intergovernmental Relations Technical Committee under subsection (4) shall be determined expeditiously.”

The Committee agreed to the proposed amendment, subject to the deletion of the term “expeditiously” and substituting therefor the words “within ninety days”.

Justification: The amendment seeks to have the matters brought before the Intergovernmental Relations Technical Committee determined expeditiously. However, the term “expeditiously” is vague and may be subject to various interpretations. It is therefore necessary to expressly provide a specific timeline within which such matters may be heard and determined.

CLAUSE 56

THAT clause 56 of the Bill be amended in sub-clause (1) by deleting the words “in respect of roads including national and county roads” appearing immediately after the word “Authority” and substituting therefor the words “in respect of national roads”.

The Committee agreed to the proposed amendment.

Justification: The imposition of road user charges on county roads may not be sustainable and reasonable, therefore this charge should only be imposed on national trunk roads.

CLAUSE 67

THAT clause 67 of the Bill is amended in sub-clause (1) by deleting the words ‘or for the use of road reserves’ appearing immediately after the word ‘services’.

The Committee rejected the proposed amendment.

Justification: The Authorities should be allowed to impose charges for the use of road reserves so as to guard against exploitation of public resources.

CLAUSE 83

THAT clause 83 of the Bill be amended—

(a) in sub-clause (1) by—

- (i) inserting the words “pedestrians, or” immediately after the words “for the benefit of the”;
- (ii) inserting the following words “including pavements, footpaths and footbridges” immediately after the words “or other works as” in paragraph (a);

(b) by inserting the following new sub-clause immediately after sub-clause (1)—

“(1A) Where a responsible body, immediately before the commencement of this Act, constructed a road without such accommodation works under sub-section (1), an Authority or a county roads agency shall, within a period of twenty four months, construct such accommodation works as are necessary for the benefit or convenience of pedestrians, or the owners and occupiers of lands adjoining those on which a road is constructed.”

The Committee agreed to the proposed amendment.

Justification: The amendment seeks to ensure that an Authority, when constructing a road, shall provide for all the necessary access facilities for the benefit of the owners as well as other users of land adjoining the public roads.

The amendment further seeks to provide for a two-year timeline within which an Authority should construct the necessary access facilities in the case of roads previously constructed before the commencement of this Act, without such access facilities.

CLAUSE 85

THAT clause 85 of the Bill be amended in paragraph (f) by inserting the words “pavement, footpath or footbridge” immediately after the words “parking area”

The Committee agreed to the proposed amendment.

Justification: The amendment seeks to include the obstruction of pavements, footpaths and footbridges as offences punishable under the Act.

CLAUSE 98

THAT clause 98 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (f)–

“(fa) size, standards and use of pavements, footpaths and footbridges, including measures as are necessary to make such accommodation works fit for use by persons living with disabilities and cyclists”

The Committee agreed to the proposed amendment.

Justification: The amendment seeks to include the setting of standards for the construction of pavements, footpaths and footbridges as a matter which the Cabinet Secretary will have the power to make regulations.

CLAUSE 100

THAT clause 100 of the Bill be amended–

(a) in sub-clause (2)–

(i) by inserting the following new paragraph immediately after paragraph (b)—
“(ba) constructing, upgrading, rehabilitating and maintaining accommodation works such as pavements, footpaths or footbridges as are necessary for the benefit of convenience of pedestrians, or the owners or occupiers of lands adjoining those on which the road is constructed”

(ii) by deleting the words “county government” appearing at the end of paragraph (f) and substituting therefor the words “national government”

(b) in sub-clause (3) by inserting the words “and accommodation works” immediately after the words “ and county roads”

The Committee agreed to the proposed amendment.

Justification: The amendment seeks to introduce additional functions of the county governments in relation to construction of pavements, footpaths and footbridges.

The amendment further seeks to introduce the aspect of collaboration with the national government as well as the duty of the national government to be responsible for the development of standards for the construction and maintenance of county roads as well as accommodation works.

CLAUSE 101

THAT clause 101 of the Bill be amended—

(a) by renumbering the existing clause as sub-clause (1), and;

(b) by inserting the following new sub-clause under sub-clause (1)—

‘(2) In the exercise of the powers under subsection (1), each county government through their County Roads Agency shall classify and assign the roads under their jurisdiction and submit the proposed classification to the Cabinet Secretary for approval and inventory purposes.’

The Committee rejected the proposed amendment.

Justification: The amendment seeks to give the county governments the function of classification of roads, which is a national government function.

CLAUSE 102

THAT clause 102 of the Bill be amended in sub-clause (5) by deleting paragraph (a) and substituting therefor the following new paragraph—

‘(a) the former boards of the Kenya National Highways Authority, the Kenya Rural Roads Authority and the Kenyan Urban Roads Authority shall remain in place following the commencement of this Act until the Authorities contemplated under this Act are duly constituted.’

The Committee rejected the proposed amendment.

Justification: The amendment seeks to provide an indefinite transition period from the old Boards to the new Boards to be constituted upon the coming into force of the Act. The Committee is of the view that this may result in unnecessary abuse of the transition period especially where the new Boards are not constituted expeditiously.

THIRD SCHEDULE

THAT the Third Schedule of the Bill be amended—

(a) in the marginal note by deleting the words ‘sec 6(2)(i)’ and substituting therefor with the numeration “Sec 6(2)(1)”;

(b) in the proposed amendments to the Kenya Roads Board Act, No. 7 of 1999 by—
inserting the following amendment immediately after the proposed amendment to section 17—

s.17(2) Delete and substitute therefor the following new subsection—

(2) The Constituency Roads Committee shall comprise of—

- (a) two members from the respective Constituency Development Fund Committee;
- (b) two officers serving in the office of the county Senator;
- (c) the County Executive Committee member for roads;
- (d) a representative of the Kenya National Roads Authority in the region,

- who shall be the Secretary to the Committee;
- (e) the respective Deputy County Commissioner or his representative;
 - and
 - (f) two members co-opted by the Committee to represent such special interests with regard to roads as the committee may determine from time to time, and who shall not have voting rights;

Deleting the proposed amendment to section 17(3) and (4) and substituting therefor the following—

s. 17(3) Delete and substitute therefor the following new subsection—

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

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

Inserting the following amendment immediately after the proposed amendment to section 17A—

s. Delete paragraph (a) and substitute therefor the following new paragraphs—

- ~~17A(2)~~ (a) one representative of the Constituency Development Fund Committee who is a member of the Constituency Roads Committee;
- (aa) two officers serving in the office of the county Senator who are members of the Constituency Roads Committee;

The Committee agreed to the proposed amendment in paragraph (a).

The Committee rejected the proposed amendments in paragraph (b).

Justification: The inclusion of representatives of the office of the county Senator in the Constituency Roads Committee and the Constituency Tender Committee goes against the provisions of Article 96 of the Constitution which provides for the role of the Senate.

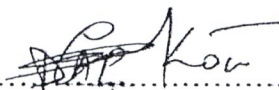
Further, clause 101 of the Bill provides that the County Executive Committee member for roads shall be responsible for the establishment of the County Roads Agency, therefore it is not necessary to include the County Executive Committee member in the two committees.

4.0 COMMITTEE RECOMMENDATION

Having considered the Senate amendments to the Kenya Roads Bill (National Assembly Bill No. 47 of 2017) the Committee recommends that the National Assembly—

- 1) **Approves** Senate amendment to **Clauses 4, 7(d), 12, 48(b), 56, 83, 85, 98, 100 and Third Schedule (a);**
- 2) **Rejects** the Senate amendment to **Clauses 2, 7(a), (b),(c), 9, 10, 14, 17, 20, 44, 47, 48(a), 67, 101, 102 and Third Schedule (b);**
- 3) **Further amends** the Senate amendments to clause 52, by deleting the word “expeditiously” and inserting therefor the words “within ninety days”

SIGNED



CHAIRPERSON

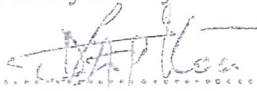

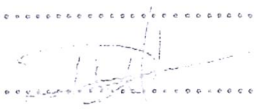
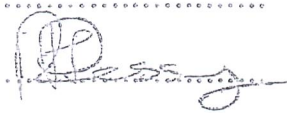
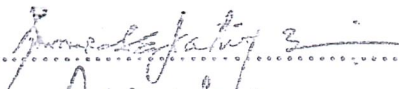
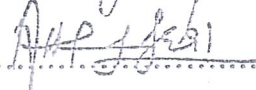
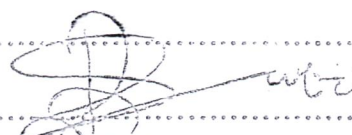
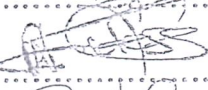
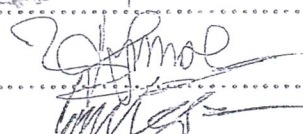
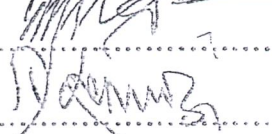

(HON. DAVID PKOSING, CBS, M.P)

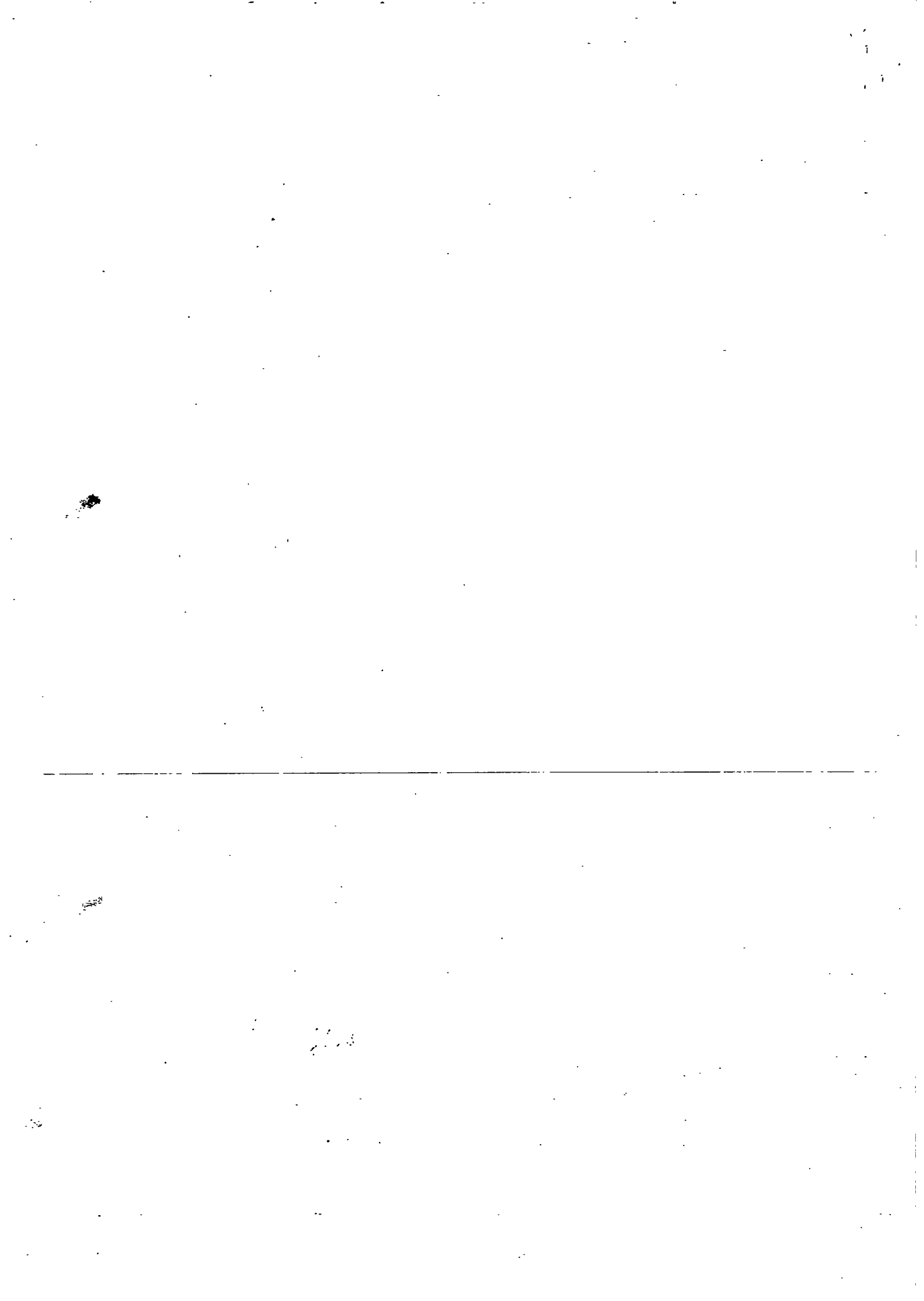
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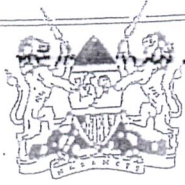
1.4 ADOPTION OF THE COMMITTEE REPORT

We, the Members of the Departmental Committee on Transport, Public Works and Housing have, pursuant to Standing Order 199, adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today Friday 8th March, 2019:-

1. Hon. David Pkosing, M.P. .....
Chairperson
2. Hon. Moses Kuria, M.P. .....
Vice Chairperson
3. Hon. Samuel Arama, M.P.
4. Hon. David Njuguna Kiaraho, M.P. .....
5. Hon. Johnson Many Naicca, M.P.
6. Hon. Rigathi Gachagua, M.P.
7. Hon. Peris Pesi Tobiko, M.P. .....
8. Hon. Suleiman Dori Ramadhani, M.P.
9. Hon. Savula Ayub Angatia, M.P.
10. Hon. Ahmed Abdisalan Ibrahim, M.P. .....
11. Hon. Ahmed Bashane Gaal, M.P. .....
12. Hon. Dominic Kipkoech Koskei, M.P.
13. Hon. Gideon Mutemi Mulyungi, M.P.
14. Hon. Kulow Maalim Hassan, M.P. .....
15. Hon. Mugambi M. Rindikiri, M.P. .....
16. Hon. Rehema Dida Jaldesa, M.P. .....
17. Hon. Shadrack John Mose, M.P. .....
18. Hon. Tom Mboya Odege, M.P.
19. Hon. Vincent Kemosi Mogaka, M.P. .....



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PARLIAMENT
OFFICE OF THE CLERK OF THE SENATE

SENATE AMENDMENTS TO THE KENYA ROADS BILL (NATIONAL
ASSEMBLY BILL NO. 47 OF 2017)

The following amendments to the Kenya Roads Bill (National Assembly Bill No. 47 of 2017) were passed by the Senate on Thursday, 14th February, 2019-

Clause 2

That, Clause 2 of the Bill be amended by deleting the definition of public roads and substituting therefor the new definition-

"Public Road" means all roads falling under the classifications under Schedule I and any other subsequently classified roads".

Clause 4

That, Clause 4 be amended by inserting the words "and a county roads agency" immediately after the words "an Authority".

Clause 7

That, Clause 7 of the Bill be amended in sub-clause (1)-

- (a) by deleting the word "and" appearing immediately after the words "research on roads";
- (b) by inserting the word "and" immediately after the words "the National Transport and Safety Authority" and;
- (c) by inserting the following new paragraph—
" (k) the Council of Governors."
- (d) inserting the following new paragraph immediately after paragraph (j)
" (k) the Law Society of Kenya."

Clause 9

That, Clause 9 of the Bill be amended in sub-clause (1) by inserting the words "in consultation with the Council of Governors" immediately after the words "Cabinet Secretary".

Clause 10

That, Clause 10 of the Bill be amended—

(a) in sub-clause (2)

(i) by deleting the word "and" appearing immediately after the word road in paragraph(a);

(ii) by inserting the words "; and" immediately after the words "county road";

(iii) by inserting the following paragraph immediately after paragraph (b)—
'(c) there is uniformity in the classification of roads.'

(b) in sub-clause (3) by inserting the words, "in consultation with the relevant county government" immediately after the words "Cabinet Secretary" in the introductory phrase.

Clause 12

That Clause 12 of the Bill be amended in sub-clause (3) by deleting the words "in each county" appearing immediately after the words "administrative offices".

Clause 14

That, Clause 14 of the Bill be amended in sub-clause (2) by inserting the following new subparagraph immediately after subparagraph (ii) in paragraph (f).

(iii) the Law Society of Kenya.

Clause 17

That, Clause 17 of the Bill be amended in sub-clause (2) by inserting the following new subparagraph immediately after subparagraph (ii) in paragraph (f).

(iii) the Law Society of Kenya.

Clause 20

~~That, Clause 20 of the Bill be amended in sub-clause (2) by inserting the following new subparagraph immediately after subparagraph (ii) in paragraph (f).~~

(iii) the Law Society of Kenya.

Clause 44

That, Clause 44 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2) —

“(3) The Authority in exercising its powers under this section shall seek consultation and approval of the relevant county government.”

Clause 47

That, Clause 47 of the Bill be deleted and substituted therefor with the following new clause:

Power to
take water

47. An Authority may for its purposes and in consultation with the relevant county government, take water from any watercourse subject to the Water Act.

Clause 48

That, Clause 48 of the Bill be amended—

(a) in sub-clause (5) by inserting the words ‘or any court of law’ appearing immediately after the words ‘National Lands Commission’, and

(b) by inserting the following new sub-clauses appearing immediately after sub-clause (12)—

(13) Roads referred to in sub-section (1) shall not be carried out where they may endanger any rare or threatened species, wildlife migration, water sources or springs or sites of cultural or natural importance

(14) All contemplated roads or road-works in sensitive areas of cultural or natural importance such as wetlands, indigenous forests and historic or prehistoric sites shall require approval from the National Environment Management Authority as per section 42 of the Environmental Management and Co-ordination Act, 1999.

(15) In the event that the proposed road works cannot avoid passing through a protected area, the Authority shall construct overpasses or underpasses to allow wildlife movement at frequent intervals.

(16) With reference to sub-section 15, where overpasses or underpasses cannot be constructed, the Authority shall ensure that fences are erected on both sides of the road.

Clause 52

That, Clause 52 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4)—

(5) "Any matter brought to the Intergovernmental Relations Technical Committee under subsection (4) shall be determined expeditiously."

Clause 56

That, Clause 56 of the Bill be amended in sub-clause (1) by deleting the words 'in respect of roads including national and county roads' appearing immediately after the word 'Authority' and substituting therefor with the words 'in respect of national roads'.

Clause 67

That, Clause 67 of the Bill be amended in sub-clause (1) by deleting the words 'or for the use of road reserves' appearing immediately after the word 'services'.

Clause 83

That, Clause 83 be amended —

(a) in sub-clause (1) by

(i) inserting the words "pedestrians, or" immediately after the words "for the benefit of the".

(ii) inserting the following words "including pavements, footpaths and footbridges" immediately after the words "or other works as" in paragraph (a).

(b) by inserting the following new sub-clause immediately after sub-clause (1)

(1A) Where a responsible body, immediately before the commencement of this Act, constructed a road without such accommodation works under sub-section (1), an Authority or a county roads agency shall, within a period of twenty four months, construct such

accommodation works as are necessary for the benefit or convenience of pedestrians, or the owners and occupiers of lands adjoining those on which a road is constructed.

Clause 85

That, Clause 85 be amended in paragraph (f) by inserting the words "pavement, footpath or footbridge" immediately after the words "parking area".

Clause 98

That, Clause 98 be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (f) -

- (fa) size, standards and use of pavements, footpaths and footbridges, including measures as are necessary to make such accommodation works fit for use by persons living with disabilities and cyclists;

Clause 100

That, Clause 100 be amended -

(a) in sub-clause (2) -

(i) by inserting the following new paragraph immediately after paragraph (b)

(ba) constructing, upgrading, rehabilitating and maintaining accommodation works such pavements, footpaths or footbridges as are necessary for the benefit of convenience of pedestrians, or the owners and occupiers of lands adjoining those on which the road is constructed;

(ii) by deleting the words "county government" appearing at the end of paragraph (f) and substituting therefor the words "national government".

(b) in sub-clause (3) by inserting the words "and accommodation works" immediately after the words "county roads".

Clause 101

That, Clause 101 of the Bill be amended—

(a) by renumbering the existing clause as sub-clause (1), and;

(b) by inserting the following new sub-clause under sub-clause (1)—

{2) In the exercise of the powers under subsection (1), each county government through their County Roads Agency shall classify and assign the roads under their jurisdiction and submit the proposed classification to the Cabinet Secretary for approval and inventory purposes.'

Clause 102

That, Clause 102 of the Bill be amended in sub-clause (5) by deleting paragraph (a) and substituting therefor the following new paragraph:

(a) the former boards of the Kenya National Highways Authority, the Kenya Rural Roads Authority and the Kenya Urban Roads Authority shall remain in place following the commencement of this Act until the Authorities contemplated under this Act are duly constituted.'

Third Schedule

That, the Third Schedule of the Bill be amended—

a) in the marginal note by deleting the words 'sec 6(2)(i)' and substituting therefor with the numeration 'Sec.6(2)(1)'

b) in the proposed amendments to the Kenya Roads Board Act, No. 7 of 1999 by —

inserting the following amendment immediately after the proposed amendment to section 17 —

s.17(2) Delete and substitute therefor the following new subsection —

(2) The Constituency Roads Committee shall comprise of —

- a) two members from the respective Constituency Development Fund Committee;
- b) two officers serving in the office of the county Senator;
- c) the County Executive Committee Member for Roads;
- d) a representative of the Kenya National Secondary Roads Authority in the region, who shall be the Secretary to the Committee;

e) a representative from the Ministry responsible for planning;

f) the respective Deputy County Commissioner or his representative; and

g) two members co-opted by the Committee to represent such special interests with regard to roads as the committee may determine from time to time, and who shall not have voting rights;

deleting the proposed amendment to section 17(3) and (4) and substituting therefor -

s. 17(3) Delete and substitute therefor the following new subsection -

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

s.17(4) Delete the words "Kenya Rural Roads Authority" whenever it appears and substitute therefor with "Kenya National Secondary Roads Authority"

inserting the following amendment immediately after the proposed amendment to section 17A -

s.17A(2) Delete paragraph (a) and substitute therefor the following new paragraphs -

a) one representative of the Constituency Development Fund Committee who is a member of the Constituency Roads Committee

aa) two officers serving in the office of the county Senator who are members of the Constituency Roads Committee.



REPUBLIC OF KENYA

TWELFTH PARLIAMENT - THIRD SESSION

THE NATIONAL ASSEMBLY

MESSAGES

MESSAGE FROM THE SENATE

(No. 01 of 2019)

ON PASSAGE OF THE PHYSICAL PLANNING BILL, 2017; THE LAND VALUE INDEX LAWS (AMENDMENT) BILL; 2018 AND THE KENYA ROADS BILL, 2017

Honourable Members, pursuant to the provisions of Standing Order 41, I wish to report to the House that I have received three Messages from the Senate regarding the passage of the following Bills which originated in the National Assembly:-

- (i) The Physical Planning Bill (National Assembly Bill No. 34 of 2017);
- (ii) The Land Value Index Laws (Amendment) Bill (National Assembly Bill No. 3 of 2018); and
- (iii) The Kenya Roads Bill (National Assembly Bill No. 47 of 2017).

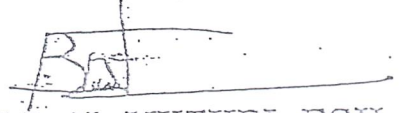
Honourable Members, the Bills were passed by the Senate on Thursday, 14th February, 2019, **with amendments**. The Senate now seeks the concurrence of the National Assembly **to the said Bills** in accordance with the Provisions of Article 112(1) (b) of the Constitution.

Honourable Members, I now direct the Clerk to circulate the amendments to all Members in accordance with Standing Order 145. In this regard, the Senate amendments to the said Bills stand committed to the following Departmental Committees for consideration:-

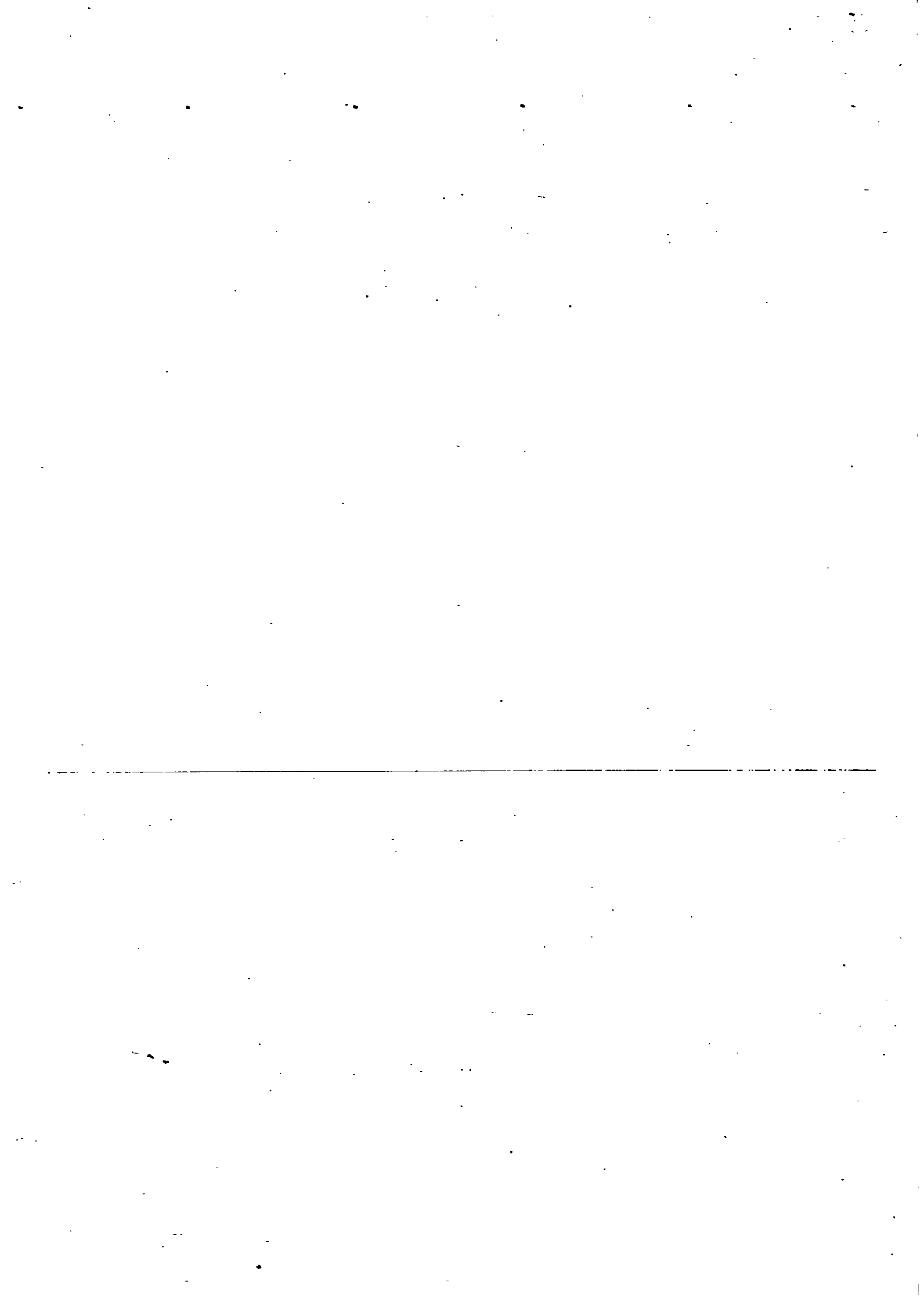
S/No.	Bill	Departmental Committee
(1)	The Physical Planning Bill (National Assembly Bill No. 34 of 2017)	Lands
(2)	The Land Value Index Laws (Amendment) Bill (National Assembly Bill No. 3 of 2018)	
(3)	The Kenya Roads Bill (National Assembly Bill No. 47 of 2017)	Transport, Public Works and Housing

Honourable Members, the Committees are expected to submit their reports before the amendments are considered by the House. I wish to remind the House that the National Assembly will only consider the amendments made by the Senate to the Bills, and not any other part of the Bills.

I thank you!


THE HON. JUSTIN B. N. MUTURI, EGH, M.P.
SPEAKER OF THE NATIONAL ASSEMBLY

Thursday, February 21, 2019



MINUTES OF THE TENTH (10TH) SITTING OF THE DEPARTMENTAL
COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON
TUESDAY, 5TH MARCH 2019 AT 10.00 A.M. IN GROUND FLOOR BOARDROOM,
RED CROSS BUILDING, PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. David Pkosing - Chairperson
2. Hon. Samuel Arama
3. Hon. Suleiman Dori Ramadhani
4. Hon. Ahmed Abdisalan Ibrahim
5. Hon. Ahmed Bashane Gaal
6. Hon. Dominic Kipkoech Koskei
7. Hon. Gideon Mutemi Mulyungi
8. Hon. Kulow Maalim Hassan
9. Hon. Mugambi Murwithania Rindikiri
10. Hon. Peris Pesi Tobiko
11. Hon. Rehema Dida Jaldesa
12. Hon. Rigathi Gachagua
13. Hon. Shadrack John Mose
14. Hon. Tom Mboya Odege
15. Hon. Vincent Kemosi Mogaka

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria - Vice Chairperson
2. Hon. David Njuguna Kiaraho
3. Hon. Johnson Many Naicca
4. Hon. Savula Ayub Angatia

SECRETARIAT

- | | | |
|-----------------------------|---|------------------------|
| 1. Ms. Chelagat Aaron Tungo | - | Clerk Assistant I |
| 2. Mr. Ahmed Salim | - | Clerk Assistant III |
| 3. Ms. Clara Kimeli | - | Senior Legal Counsel |
| 4. Ms. Christine Odhiambo | - | Legal Counsel I |
| 5. Mr. James Muguna | - | Researcher Officer III |
| 6. Mr. Yeziel Jillo | - | Sergeant at arm |
| 7. Mr. Collins Mahambe | - | Audio Officer |

MIN No. TPWH 040/2019: PRELIMINARIES

The meeting was called to order at ten o'clock, with a word of prayer from the Chairperson. Members confirmed the agenda as receiving briefs on consideration for ratification of the Constitution of the African Civil Aviation Commission and consideration of the Senate Amendments to the Kenya Roads Bill (National Bill No. 47 of 2017). The Committee was further informed that Ms. Christine Odhiambo would be the new Legal Counsel attached to the Committee.

MIN No. TPWH 041/2019: CONFIRMATION OF MINUTES OF THE PREVIOUS

Confirmation of minutes of the ninth sitting held on 28th February 2019 was adopted, the proposer being Hon. Dominic Koskei, MP and the seconder being Hon. Vincent Kemosi, MP.

MIN No. TPWH 042/2019: LEGAL BRIEF ON THE REVISED CONSTITUTION OF THE AFRICAN CIVIL AVIATION COMMISSION (AFCAC)

The Legal Counsel informed the Committee that they were not ready with the legal brief on the revised Constitution of the African Civil Aviation Commission (AFCAC) and requested the Committee to defer the agenda to the next sitting of the Committee. The Committee acceded to the request.

MIN No. TPWH 043/2019:

LEGAL BRIEF ON THE SENATE AMENDMENTS
TO THE KENYA ROADS BILL (NATIONAL BILL
NO. 47 OF 2017)

The Legal Counsel took Members through the Senate Amendments to the Kenya Roads Bill (National Bill No. 47 of 2017) clause by clause. The Committee resolved as follows:

- i. To ~~recommend~~ to the National Assembly to reject the Senate amendment to Clauses 2, 7(a), (b),(c), 9, 10, 14, 17, 20, 44, 47, 48(a), 67, 101, 102 and Third Schedule (b);
- ii. To recommend to the National Assembly to approve Senate amendment to Clauses 4, 7(d), 12, 48(b), 56, 83, 85, 98, 100 and Third Schedule (a);
- iii. To further recommend to the National Assembly to amend the Senate amendments to clause 52, by deleting the word "expeditiously" and inserting therefor the words "within ninety days"

MIN No. TPWH 044/2019:

ANY OTHER BUSINESS

Members were informed that the State Department for Housing, vide their letters dated 14th February 2019 and 25th February 2019, wrote to the Committee requesting the Committee to propose names of Members and Committee Clerks who shall accompany the Ministry to four countries for proposed knowledge exchange program. The Committee proposed Hon. Ahmed Bashane Gaal and Hon. Rehema Dida Jaldesa for Thailand (Bangkok), Hon. Suleiman Dori Ramadhani and Hon. Johnson Many Naicca for Morocco (Casablanca), Hon. Shadrack John Mose and Hon. Gideon Mutemi Mulyungi for India (Ahmedabad) and Hon. Tom Mboya Odege and Hon. Rigathi Gachagua for Brazil (Curitiba).

MIN No. TPWH 045/2019:

ADJOURNMENT

There being no other business, the sitting was adjourned at forty minutes past noon. The next meeting to be held on Thursday, 7th March 2019.

Signed.....

~~Chairperson~~

Date.....8/03/2019

MINUTES OF THE TWELFTH (12TH) SITTING OF THE DEPARTMENTAL
COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON FRIDAY,
8TH MARCH 2019 AT 9.00 A.M. AT HILTON GARDEN INN NAIROBI AIRPORT,
MACHAKOS COUNTY

MEMBERS PRESENT

1. Hon. David Pkosing - Chairperson
2. Hon. Moses Kuria - Vice Chairperson
3. Hon. Samuel Arama
4. Hon. David Njuguna Kiaraho
5. Hon. Peris Pesi Tobiko
6. Hon. Ahmed Abdisalan Ibrahim
7. Hon. Ahmed Bashane Gaal
8. Hon. Dominic Kipkoech Koskei
9. Hon. Gideon Mutemi Mulyungi
10. Hon. Kulow Maalim Hassan
11. Hon. Mugambi Murwithania Rindikiri
12. Hon. Rehema Dida Jaldesa
13. Hon. Shadrack John Mose
14. Hon. Tom Mboya Odege
15. Hon. Vincent Kemosi Mogaka

MEMBERS ABSENT WITH APOLOGY

1. Hon. Suleiman Dori Ramadhani
2. Hon. Johnson Manya Naicca
3. Hon. Rigathi Gachagua
4. Hon. Savula Ayub Angatia

SECRETARIAT

- | | | |
|-----------------------------|---|----------------------|
| 1. Ms. Chelagat Aaron Tungo | - | Clerk Assistant I |
| 2. Mr. Ahmed Salim | - | Clerk Assistant III |
| 3. Ms. Christine Odhiambo | - | Legal Counsel I |
| 4. Mr. James Muguna | - | Research Officer III |
| 5. Mr. Collins Mahambe | - | Audio Officer |
| 6. Mr. Moses Kariuki | - | Sergeant at arm |
| 7. Ms. Alice Kitur | - | Executive Assistant |

IN ATTENDANCE

- | | | |
|------------------------|---|---|
| 1. Eng. Stanley Kamau | - | DG, Pub. Inv. & Portf. Mgmt. N. Treasury |
| 2. Dr. Ronoh Tuimising | - | Legal Expert, PPP Unit, National Treasury |

MIN No. TPWH 050/2019: PRELIMINARIES

The meeting was called to order at fifteen minutes past nine o'clock, with a word of prayer from the chairperson. Members confirmed the agenda as consideration of the Privately Initiated Investment Proposal (PIIP) from the Kenya Airways PLC to the Kenya Airports Authority which sought to introduce a Public Private Partnership for the operations, management and development of Jomo Kenyatta International Airport. It was resolved that the entire day one sessions will be given to the experts from the National Treasury who will take Members through the proposal.

MIN No. TPWH 051/2019: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

Confirmation of minutes of the tenth sitting held on 5th March 2019 was adopted, the proposer being Hon. Shadrack Mose and the seconder being Hon. Dominic Koskei.

Confirmation of minutes of the eleventh sitting held on 7th March 2019 was adopted, the proposer being Hon. Gideon Mulyungi and the seconder being Hon. Ahmed Bashane.

MIN No. TPWH 052/2019:

ADOPTION OF THE REPORT ON THE SENATE
AMENDMENTS TO THE KENYA ROADS BILL,
2017

The Committee adopted the Report on the Senate Amendments to the Kenya Roads Bill, 2017 (National Assembly Bill No. 47 of 2017). The Committee concurred with the Senate on some amendments and differed on others. The Report was adopted, the proposer being Hon. Mugambi Murwithania and the seconder being Hon. Samuel Arama.

MIN No. TPWH 053/2019:

EXPERT BRIEF ON THE CIVIL AVIATION
BUSINESS IN KENYA

The Committee was taken through the expert brief by Eng. Stanley Kamau, the Director General of the Public Investments and Portfolio Management unit, at the National Treasury. In his presentation, the Director General addressed Members on the role of civil aviation to the economy. He explained this in the context of its contribution to the economy, the establishment and sustenance of the Nairobi as a Financial Centre and as a hub for Africa, employment, skills development for Kenya, among others. He noted that government involvement in the aviation sector is therefore very necessary. He also took Members through the Kenya Airways Published **Accounts** for the financial year 2017 and Members noted some improvement since 2015 to July 2018. He also touched on the Kenya Airports Authority accounts for the financial year 2017 as well as the issue of capital restructuring of Kenya Airways.

Dr. Ronoh Tuimising, another expert from the National Treasury, took Members through the second part of the presentation. He explained the background and strategic context of the KQ proposal to operate JKIA under a PPP arrangement by addressing issues around the market drivers, continental realities and fiscal drivers. It was noted that Kenya's competitors in aviation have focused on consolidation of aviation functions through formation of State Corporations that employ commercial models which ensure profitability with minimum interference. It was also noted that the proposed PPP transaction merging our national airline with our main aviation hub needs to be viewed from a strategic perspective by linking our aviation policy with our economic policy in a coherent manner. In his presentation, Dr. Ronoh explained on the entire concept of

PPP, its structure, its procurement and values guiding the PPP process irrespective of the procurement method.

MIN No. TPWH 054/2019: ADJOURNMENT

There being no other business, the sitting was adjourned at forty minutes past one. The next meeting to be held at thirty minutes past two o'clock, same day on Friday, 8th March 2019.

Signed.....

(Chairperson)

Date.....