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COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE ROADS BILL 2017

TO

THE NATIONAL ASSEMBLY

FROM

THE COUNCIL OF GOVERNORS

INFRASTRUCTURE AND ENERGY COMMITTEE

**THE COUNCIL OF GOVERNORS**, a non – partisan organization established in accordance with the provision of Section 19 of the Intergovernmental Relations Act, of P.O. Box Number 40401-00100, Nairobi (hereafter referred to as “the Council”, which expression shall where the context admits so include its successors and assigns) on the other part;

**In recognition** of the fact that the Constitution sets out the functions of County Governments under Part II of the Fourth Schedule to include county public works, county roads, street lighting, traffic, parking, public road transport, ferries and harbors.

**In further recognition** of the need to align the Roads Bill 2017 and its implementation to the Constitution to ensure consultation and cooperation in the sector and for effective implementation in the counties; and

**Aware** of the need for coordinated action between the national and county governments to ensure that these legislations properly respond to the key issues facing the sector, and further reflects the spirit and purpose of the devolution process.

The Council of Governors therefore proposes the following amendments to the Roads Bill 2017:

CLAUSE	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
Long title of the Bill	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	Exclude the establishment of the Kenya National Urban Roads Authority and the Kenya National Secondary Roads Authority	<p>The Kenya National Urban Roads Authority and the Kenya National Secondary Roads Authority as currently constituted in the Bill perform functions of the County Governments leading to duplication of functions by various organs of the national and county governments.</p> <p>Additionally, these proposed Authorities perform the same functions as the present Kenya Urban Roads Authority (KURA) and Kenya Rural Roads Authority (KeRRA), which the High Court, in the case of <i>Council of County Governments v AG &amp; 4 others (Petition 472 of 2014)</i> declared that they be dissolved or wound up, since the</p>

			Constitution rendered the roles that they were playing prior to the promulgation of the Constitution redundant.
<b>Clause 2</b>	"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;	Amend 'Authority' to mean the Kenya National Highways Authority as established under section 12.	The proposed Kenya National Urban Roads Authority and the Kenya National Secondary Roads Authority arrogate on the functions of the County Government hence undermining the spirit of devolution as is envisaged in Article 189 of the Constitution.
<b>Clause 7 (1) Composition of the Board</b>	The Board shall consist of a representative from each of the following bodies — (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.	1. Include a County representative nominated by the Council of Governors. 2. Exclude representatives from Kenya National Urban Roads Authority and Kenya National Secondary Roads Authority from the membership of the Board	County Governments are directly responsible for the construction and maintenance of County Roads and as such, should have a representative in the Board.
<b>Clause 9(1) Roads Standards</b>	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.	The Cabinet Secretary, in consultation with County Governments, shall by regulations prescribe standards for testing, design, construction and maintenance of national trunk roads by the roads	In the spirit of consultation and cooperation under Article 6(2) of the Constitution, this will ensure that the standards prescribed are implemented/implementable by the county governments

		authorities and county roads by county Governments.	
<b>Clause 10 (2) Classification of national trunk and county roads</b>	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...	Where a new road is established, the Authority or county government shall give a proposal on the classification and assignment of roads and submit to the Cabinet Secretary for National Inventory and mapping	The role of the Cabinet Secretary to classify roads as proposed in this clause will ensure uniformity of road classifications in the Country. However, this role should be done respecting the Constitutionally assigned functions of both levels of government.
<b>Clause 10(3) Classification of national trunk and county roads</b>	The Cabinet Secretary may, from time to time, review the classification and assignment of public roads under subsection (2).....	The Cabinet Secretary may, from time to time, and in consultation with county governments, review the classification and assignment of public roads under subsection (2).....	The roads function is a function of both levels of government therefore in the spirit of Article 6(2) of the Constitution, the Cabinet Secretary should consult with the County Governments when reviewing the classification of roads.
<b>Clause 16-17</b>	These sections provide for the establishment of the Kenya National Urban Roads Authority	Delete these sections	The Authority is unconstitutional as it seeks to have control over county roads. The Constitution only provides for National trunk roads and County roads. This Authority will also lead to the duplication of roles with those of County Governments.  Alternatively, the Authority should be absorbed and form part of County Governments.
<b>Clause 19 -21</b>	This section provides for the establishment of the Kenya National Secondary Roads Authority which is responsible for the management, development, rehabilitation and maintenance of secondary national trunk roads	Delete these sections	The Authority is unconstitutional as it seeks to have control over county roads. The Constitution only provides for National trunk roads and County roads.  Alternatively, the Authority should be absorbed and form part of County Governments in order to increase County capacity.

<p><b>Clause 41</b> <b>Acquisition of land.</b> <b>No.6 of 2012.</b></p>	<p>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.</p>	<p>Include provision for the approval of the county government in the event the land being acquired is under the county government</p>	<p>Under Article 62(2) and Article 63 of the Constitution, county governments are in charge of public land held in trust for the people resident in the county and they are also in charge of unregistered community land in the counties. For this reason, if any of the land being acquired is under the administration of the county government, it is prudent to ensure that they consult with the county government before the acquisition of such land.</p>
<p><b>Clause 44</b> <b>Power to enter, and to alter position of pipes, etc.</b></p>	<p>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.</p>	<p>The alteration of electric, telephone poles, drainage and sewer should be in consultation and with approval of the relevant County Government</p>	<p>The function of county public works, county planning, gas and energy reticulation are functions of the county governments therefore if the Authority wants to alter such infrastructure, there is need to consult the relevant county governments.</p>
<p><b>Clause 47</b> <b>Power to take water.</b> <b>No.8 of 2002.</b></p>	<p>An Authority may, for its purposes, take any water from any natural watercourse subject to the Water Act, 2002.</p>	<p>An Authority may, for its purposes, and in consultation with the relevant county government, take any water from any natural watercourse subject to the Water Act, 2016.</p>	<p>Under the Fourth Schedule of the Constitution, County governments are in charge of implementing policies that conserve natural resources and the environment particularly on soil conservation. For this reason, an Authority should first consult with the relevant county government.</p> <p>The current Water Act is 2016 and not 2002</p>
<p><b>Clause 55(2)</b> <b>National toll bridges.</b></p>	<p>The establishment of a ferry boat service under subsection (1) shall require the approval of the Cabinet Secretary and the terms and conditions</p>	<p>The establishment of a ferry boat service under subsection (1) shall require the approval of the relevant county</p>	<p>Under the Fourth Schedule of the Constitution, the function of county transport includes ferries and harbours. For this reason, the establishment of a ferry boat</p>

	governing its operation, including the charges for use of the ferry, shall be provided by Regulations made by the Cabinet Secretary.	government 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 and the relevant county government	service, its operations and charges should be done by the relevant county government
Clause 56(1) Road user charges	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.	The Cabinet Secretary responsible for finance may, in consultation with the Cabinet Secretary and County Governments, 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.	In the spirit of consultation and cooperation under Article 6(2) of the Constitution, this will ensure that the road user charges prescribed are implemented/implementable by the county governments in respect to county roads.
Clause 67 Fees and charges	The Authority may, subject to the approval of the Cabinet Secretary, impose any levy, charges or fees for any of its services under their jurisdiction or for the use of road reserves.	Delete the phrase "... or for the use of road reserves..."	<p>According to the Final Report on the Transfer of Functions by the Transition Authority, reserves for County roads and access to roadside developments are functions of the county governments and the Authority should not impose any fees on them without the approval of the county government.</p> <p>Additionally, in the <b>Constitutional Petition No. 300 Of 2014: Real Deals Ltd Vs Kenya National Highways Authority</b> the Real Deals Ltd challenged the move by KeNHA to exercise control over advertising on bill boards within the road reserves in Kenya. The court in this case as well as in <b>Council of County Governments v AG &amp; 4 others (Petition 472 of 2014)</b>, held that in light of the Fourth Schedule,</p>

			County governments are in charge of outdoor advertising.
<b>Clause 75 Impact of certain county government decisions on national trunk roads</b>	(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.	(1) A county government may consult the relevant/respective Authority's 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.	This consultation will ensure that the activities of both levels of government are in tandem and that alterations by the county governments to county roads does not adversely affect the plans of national trunk roads
<b>Clause 77 Cabinet Secretary's power of direction</b>	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.	The Cabinet Secretary shall in consultation with County Governments oversee the performance of the activities of the Authority, under this Act and may, in writing, give directions on matters of policy not inconsistent with the provisions of this Act.	The powers of the Cabinet Secretary should only be limited to the Kenya National Highways Authority. Other roles performed by the county governments should be considered in intergovernmental forums.
<b>Clause 98 (1) Regulations</b>	The Cabinet Secretary may, in consultation with the respective Authority make Regulations for the better carrying out of the provisions of this Act.	The Cabinet Secretary may, in consultation with County Governments and the Authority, make Regulations for the better carrying out of the provisions of this Act.	This will ensure that the prescribed Regulations are implemented effectively at the national and county level
<b>Clause 99 Review and revocation</b>	The Cabinet Secretary shall review and revoke all legal notices establishing the	The Cabinet Secretary shall, in consultation with County Governments,	These authorities and assets are under the ambit of both the national and county

of certain legal notices	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 respective Authority, as contemplated under this Act.	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 respective Authority, as contemplated under this Act	government therefore the review or revocation of their establishing legal notices should be conducted through intergovernmental forums and in consultation with county governments.
First Schedule Classification of public roads	This Schedule provides that the National Government is in charge of Class S, A, B, C, H and J as National trunk roads while county roads include Class E, F, G, K, L, M, N and P.	Amend to provide that the National Government retain Class S, A, B, C and J as National trunk roads while county governments be in charge of Class D, E, F, G, K, L, M, N and P.  This would then necessitate the elimination of the proposed national secondary classification of roads, which include class D roads.	CoG adopts the classification of National and County roads as provided for under the Constitution. Secondary National Trunk roads are not provided for in the Constitution. Moreover, the Transition Authority transferred Class D, E and other unclassified roads to Counties vide Legal Notice No 24 dated 22 <sup>nd</sup> January 2016.
Third Schedule (S. 104) S. 6(2)(d)	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	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) Fifty Seven (55%) per centum is allocated to County Governments equitably in respect of County Roads;	The Council proposes that with the abolishment of the proposed Kenya National Secondary Roads Authority and the Kenya National Urban Roads Authority and therefore, the resources allocated to these Authorities be transferred to County Governments. This would bring County RMLF share allocation to a total of 55% and would be in compliance with the Constitutional principle of resources follow functions.



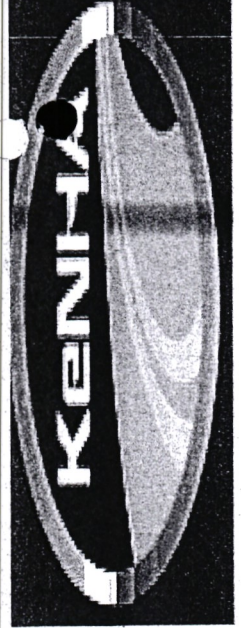
	<p>centum shall be equally distributed to the Constituencies;</p> <p>(3) Ten (10%) per centum is allocated to the National Urban Roads Authority</p> <p>(4) Fifteen (15%) per centum is allocated to the county governments equally in respect of county roads;</p> <p>(5) One (1%) per centum is allocated to the Kenya Wildlife Services in respect of roads in national parks and reserves;</p> <p>(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;</p> <p>(7) One (1%) per centum to be allocated to the National Transport and Safety Authority to support road safety programmes; and</p> <p>(8) Two (2%) per centum to the Kenya Roads Board in respect of the recurrent expenditure of the Board.</p>	<p>(3) One (1%) per centum is allocated to the Kenya Wildlife Services in respect of roads in national parks and reserves;</p> <p>(4) 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;</p> <p>(5) One (1%) per centum to be allocated to the National Transport and Safety Authority to support road safety programmes; and</p> <p>(6) Two (2%) per centum to the Kenya Roads Board in respect of the recurrent expenditure of the Board.</p>	
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**A. Recommendations**

The Bill's objects and purposes exhibit a level of micro-management on the part of the National Government. The distinctness of counties has been emphasized in Article 6 (2) of the Constitution, and therefore this Bill should be revised and amended to conform to the provisions of the Constitution on devolution and particularly as far as the constitution provides for the Roads function.

# ANNEXURE 2

30th/Jan/2018



**Kenya National  
Highways Authority**  
Quality Highways, Better Connections

# THE KENYA ROADS BILL, 2017.

## KeNHA COMMENTS ON THE KENYA ROADS BILL, 2017

### BACKGROUND:

The Kenya Roads Bill (National Assembly Bills No. 47 of 2017) (formerly Kenya Roads Bill 2015, National Assembly Bills No. 26 of 2015), was introduced to the National Assembly by the Leader of Majority, Hon. Aden Duale on 6<sup>th</sup> December, 2017.

The National Assembly, through the office of the Clerk of National Assembly, requested for comments from all the stakeholders and members of the public to be submitted on or before 5<sup>th</sup> January, 2018 whereby KeNHA submitted its comments thereto.

### THE OBJECTS OF THE BILL:

The Kenya Roads Bill (2017) seeks to give effect to the provisions of the Fourth Schedule of the Constitution of Kenya 2010 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.

Part A and Part B of the First Schedule present a list of the roads under the established Road Agencies and those under the County Governments respectively.

The current Kenya Roads Bill (2007) was enacted before the promulgation of the Constitution of Kenya 2010 and does not therefore recognize the dual level functions between the National Government and the Counties as regards roads.

The Bill seeks to remedy this gap with a view to reflecting this new constitutional order and to ensure seamless delivery of services by both levels of Government.

### OVERVIEW OF THE BILL- KEY HIGHLIGHTS:

The Bill gives provision to classification of roads as set out under the First Schedule. The Schedule classifies roads into:

\* **Primary National Trunk Roads-** Classes S, A, B, H and J.

\* **Secondary National Trunk Roads**- Classes C and D.

\* **County Roads**- Classes E, F, G, K, L, M, N and P.

Under Part III of the Bill, the Cabinet Secretary shall be responsible for classification and assignment of roads into various categories/classes upon request or upon his/her own scheduled review.

The Bill establishes various roads agencies being the Public Roads Standards Board (PRSB), the Kenya National Highways Authority (KeNHA), the Kenya National Urban Roads Authority (KeNURA) and the Kenya National Secondary Roads Authority (KeNSRA).

Under Section 101, each County Government is required (through County Legislation) to establish a County Roads Agency as a Department under the County Executive Committee (CEC) in charge of roads.

The Bill seeks to repeal the Kenya Roads Act 2007. It further seeks to amend the Physical Planning Act No. 6 of 1996. Of utmost importance is that it seeks to amend the Kenya Roads Board Act Section 6(2)(d) which provides for the allocation of the Fund caps as follows;

- 1). **KeNHA (35%)** - (KeNHA proposes 40%).
- 2). **KeNURA (10%)** - (KeNHA proposes 7.5%).
- 3). **KeNSRA (30%)** - (KeNHA proposes 27.5%).
- 4). **County Govts.** (15%).
- 5). **KWS (Kenya Wildlife Services) - (1%)**.
- 6). **Priority Road Projects (6%)**.
- 7). **NTSA (1%) and 8). KRB (Kenya Roads Board) (2%)**.

**CONSEQUENCES OF THE BILL - KEY CONSEQUENCES:**

- i. The Bill will affect the way Counties undertake their road functions in that, they will henceforth be required to adhere to the standards set by the CS in charge of roads and to seek approval from the relevant Authority should their works on County roads have an effect on any existent or future National Trunk Road.
- ii. Another key consequence is that, under Section 102 (5) (a)- (Transitional Provisions), the Boards of the various roads agencies will stand dissolved upon commencement of the Bill/Act which we opine would present a crisis in the daily operations of the Agencies.
- iii. Another notable Section (48(1)), provides for the access and removal of material from any land for road purposes. KeNHA has proposed exemptions from cess, levies and other charges which we opine ought to be regulated by Parliament to provide for seamless road works between the Agencies and County Governments.

KeNHA submitted its comments and proposals to the Clerk of the National Assembly on 5<sup>th</sup> January, 2018 as follows:

**SCHEDULE**

**KeNHA SCHEDULE OF COMMENTS ON THE KENYA ROADS BILL, 2017**

**(ANNEXURE- THE KENYA ROADS BILL, 2017).**

NO.	SECTION:	PROVISIONS:	OBSERVATIONS:	PROPOSAL:
1.	Arrangement of Clauses.	Arrangement of Clauses (Second Schedule.) on Page 1507 of the Act.	The Second schedule is indicated to contain "Nominating Bodies" whereas this is not the case. The Second Schedule contains "Provisions Relating to The Conduct of Business and Affairs of the Board."	Delete the Words "Nominating Bodies" and Replace with "Provisions relating to the Conduct of Business and Affairs of the Board".
2.	Part I: Preliminary. Section 2: "Interpretation".	Section 2: "Interpretation".	Under the Definitions of "Class, Construction, County Executive Committee, County Road, National Trunk Road, Public Road, Road Agency, Roadside Development Toll Road, Toll Station and Vehicle", the first letters are in lower-case letters.	The definitions ought to all commence with upper-case letters for proper drafting and clarity.
3.	Section 2. "Interpretation".	Definition of "Public Road".	The Bill recognizes public roads as outlined and classified under the First Schedule. The reference to the Public Roads and Roads of Access Act (under the Bill) needs to be effected through a consequential amendment to the Acts to reflect the public roads aspect.	To avert this, we propose a definition of Public roads under this Bill to read as follows:  "Public road means all roads falling under the classifications under Schedule I and any other subsequently classified roads".
4.	Section 10(1).	Annotation.	The Annotation reads "Classification of National Trunk and County Roads".	There is need to amend the annotation at Section 10(1) to read "Classification of Public Roads" since the classification will extend to other classes of roads as well and not



		<p>The section provides that “the headquarters of the Authority shall be in the capital city, but the Authority may establish such administrative offices in <b>each county</b>, as may be necessary for the furtherance of its functions under this Act”.</p>	<p>only national trunk and county roads.</p> <p>We propose a deletion of the words “in each County” such as to leave it to the discretion of the Authority to determine whether to set up an administrative office in a certain County depending on the need.</p>
<p>5.</p>	<p>Section 12(3).  Headquarters of the Authority.</p>	<p>The section provides for KeNHA’s function being, “ ..ensuring adherence to the rules and guidelines on axle load control as provided under the Traffic Act”;</p> <p>This does not give effect to Axle Load Regulations.</p>	<p>We propose to include the words “ ..and any other subsequent regulations under this Act” after the words “Traffic Act” to incorporate the Axle Load Regulations.</p>
<p>6.</p>	<p>Section 13 (2) (d).  Enforcement of Axle Load Regulations.</p>	<p>We observe that there is no clear function of KeNHA as regards operation of tolling roads and stations whereas KeNHA is currently implementing toll projects and toll roads. Without this provision, or without it being made abundantly clear, there is a risk that an Authority’s mandate and actions in involving itself in such activities may be challenged as having derogated from its core mandate which is primarily</p>	<p>We propose that we include a function/role that clearly mandates the Authority to operate toll roads to read as follows:  “controlling, operating and managing toll roads under its jurisdiction” .</p>
<p>7.</p>	<p>Section 13 (2).  Functions and roles of KeNHA.</p>		





		construction and maintenance of roads.	
8.	Section 14(2) (f). Board Composition of KeNHA. Members Nominated by certain Organizations.	We note that KeNHA's Board does not provide for a representative from Kenya Association of Manufacturers (KAM) which we believe would be a great value addition than KEPSA (which is quite wide and not sector-specific). We opine that a representative from KAM would have expertise on and advise on urban planning of roads to meet the needs of manufacturing businesses which are the drivers of the economy.	We propose that consideration be given on dropping KEPSA from the list and in its place, engaging a representative of KAM in line with the government's "Big Four Agenda" for economic development.
9.	Section 14(5). Board Composition of KeNHA. Members Nominated by certain Organizations	The Section provides that "Despite subsection (1), the Principal Secretary in the Ministry or State department responsible for matters Board of the Kenya National Highways Authority 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".	We propose that this be amended such that the two Principal Secretaries be represented individually even if under the Same Cabinet Secretary. We opine that their roles are quite different (one being on Transport Policy while the other on Infrastructure) and each would be a value addition in their own individual right. This would also solve the issue of quorum and the number of Members in the Board.
10.	Section 17 (1) (f) (v). Composition of the Board of the KNURA.	The section provides for a Member of the Board to be	We propose deletion of the word "Physical" from the entity's name.



			<p>nominated by the Kenya Institute of <i>Physical</i> Planners. The Institute's proper name is the Kenya Institute of Planners. This may create confusion and/or cause lack of clarity.</p>	<p>Similarly, we propose the change to also apply to Section 20(2)(f)(v).</p>
<p>11.</p>	<p>Section 22(1) (a).</p>	<p>Qualifications for appointment as Chairperson of the Board of an Authority.</p>	<p>The section provides for the Chairperson to be a holder of a degree from a University recognized in Kenya. The section provides for <i>any</i> degree which may not be ideal.</p>	<p>We propose that the degree be in a field relevant to the Authority's interests and core mandate. The meaning of "relevant field" can also be defined. We propose that the relevant fields be: Civil Engineering, Accountancy, Law, Survey and Management.  Similarly under Section 22(1) (b), there is need to set clear guidelines on what 'relevant field' means and we propose that the above be adopted.</p>
<p>12.</p>	<p>Section 22 (3).</p>	<p>Procedure for appointment of the Chairperson and Members.</p>	<p>The section provides that 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. However, the Second Schedule does not contain a "Part C". Similarly, the Second Schedule does not provide for appointment</p>	<p>There is need to provide for the Procedure for appointment as envisaged herein. Similarly, Section 22 (3) needs to be amended accordingly to make reference to the correct section/schedule.</p>

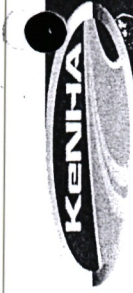


13	Section 29.	The Director General Qualifications.	<p>procedures but provides for “the Provisions relating to the Conduct of Business and Affairs of a Board”.</p> <p>Under Section 29 (2)(a), the requirement for “Highway Engineering” field has been dropped which is in the 2007 Act. Similarly, the ten (10) years’ experience do not indicate the date of commencement of measuring the experience.</p>	<p>We propose that the requirement for Highway Engineering field be retained to enable the Director General be well conversant with the core day to day workings of the Authority.</p> <p>Under Section 29(2)(b), we also propose an amendment for the section to now read;</p> <p>“has had at least ten years’ post-registration experience and at least ten years’ experience in a management level in the roads sector”.</p>
14	Section 30.	Functions of the Director- General.	<p>We note that there is no provision that effectively gives power to the Director General to delegate his duties as in Section 28 and 32.</p>	<p>We propose a Clause similar in wording to Clause 28 that allows the Director General to delegate his duties subject to ratification by the Board of the Delegation Matrix but with a proviso that he still remains overallly responsible for his duties.</p> <p>We propose a shorter time period of fourteen (14) days depending on the reasonable time required to move such utility.</p>
15.	Section 45 (3).	Notice before exercising power of ordering removal of utilities.	<p>The Section provides for the removal of the utility within sixty (60) days of such notice by the Authority. The sixty (60) days</p>	<p>We propose a shorter time period of fourteen (14) days depending on the reasonable time required to move such utility.</p>

		<p>period in our opinion would be prejudicial to KeNHA especially in an instance where costs are constantly being incurred as a result of the delay of such relocation or where the utility poses a safety threat to road users.</p> <p>The section provides that “..a road Authority may — (a) in the development, construction, rehabilitation or maintenance of a road;</p> <p>The section provides as follows:</p> <p>(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</p>	
16.	Section 46(1) (a).	Occupation of Private Land.	<p>We propose to include the word “or” after the words “..road;” for clarity.</p>
17.	Section 48 (1).	Access to Material sites etc.	<p>We propose to include a proviso that the exemption of any cess, levies and charges (in the movement of the materials) which are not imposed by an Act of Parliament. To read as follows:</p> <p>(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,</p>



		<p>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.</p>	<p>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.;</p> <p>(2) Provided that any removal therefrom of and carrying away or across any land of any soil, clay, rock, gravel, murrum, lime, sand, shale, shingle, slate or surface soil, by any route, may not result on the imposition on the Authority of any cess, levies and charges which are not imposed by an Act of Parliament</p>
18.	Section 48(7).	Fencing to avert danger.	We propose amendment of the word "adequately" to "adequate".



<p>19. Section 52 (4).</p>	<p>Disputes between Counties on inter-county roads and bridges.</p>	<p>The Section provides that:</p> <p>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 —</p> <ul style="list-style-type: none"> <li>(a) whether a road, bridge, drain or other service is required;</li> <li>(b) the standard of construction or maintenance;</li> <li>(c) each county government's share of construction or maintenance costs; or</li> <li>(d) which county government should exercise management and control of the road.</li> </ul>	<p>We propose to include a provision of the Act to the effect that the decision of the IRTC shall be final and binding to avert unnecessary litigation in judicial courts between counties leading to stalled Authority Projects.</p>
<p>20. Section 56 (4).</p>	<p>Regulations for Road User Charges.</p>	<p>Subsection 4 provides for the provisions that may be contained under the Regulations under the Act. We however note that an important factor, which is the penalties (and the legality thereof) and manner of charging the same, is left out. This has been a cause of numerous litigation where the constitutionality of the fines by</p>	<p>We propose inclusion of a provision to cater for “the penalties (and the legality thereof) and manner of charging road charges to avert the Constitutional litigation that hinder the Authority from discharging its mandate.</p>



		<p>KeNHA are challenged on the basis that KeNHA is the judge, jury and executor who condemns a Party unheard- which is allegedly against the Rule of Law.</p>	<p>We therefore propose a new addition under subsection 4 to read as follows:</p> <p>“the penalties and the legality thereof and manner of charging the same that allow the Authority to charge any fees, overload fees and/or fines and other charges without judicial determination”.</p>
21.	Section 66	Principles of Operation.	<p>We propose to add the word “sound” between the words “in accordance with the” and the words “financial Principles”.</p> <p>This will now make reference to <b>sound</b> financial principles.</p> <p>We propose an additional different section giving power to the Authority to charge fines and penalties/fees in the event of Axle Load violations which is currently costing the Authority a lot of money in defending legal suits where the Constitutionalism of the fines and fees are challenged in judicial Courts. We need to also provide that the weighbridge records showing the weight levels and the overload records by KeNHA be prima facie proof of violation/offence. See also section 98.</p>
22.	Section 67.	Fees and Charges.	<p>The Section provides that “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.”</p> <p>The section provides that “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”.</p>

23.	Section 69.	Consultation before declaration.	<p>The Section provides that, “Before making or revoking a declaration under <b>section 55</b>, the Cabinet Secretary shall —</p> <p>(a) notify each county government which, in the opinion of the Cabinet Secretary’s would be affected by the proposed declaration or revocation; and</p> <p>Principles of operation.</p> <p>Fees and Charges.</p> <p>Charges and fees to be Gazetted.</p> <p>Consultation before declaration...”</p> <p>However, this appears to be an error in cross-referencing. We opine that the correct section is Section 54 based on the content of the cross-reference.</p>	<p>We propose that the Section be amended from “Section 55” to “Section 54”.</p>
24.	Section 70.	(Side) Annotation.	<p>The annotation to the section currently reads;</p> <p>“Authority to have power of a county government for National trunk roads.”</p>	<p>Having read the spirit of what the section intends to achieve, we propose, for clarity, to reword the annotation to read:</p> <p>“Authority to have power over national trunk roads similar to the power of a County Government for/over county roads.”</p>
25.	Section 74.	Improvement of National Trunk Road vis a vis County Road.	<p>The Section provides that “If a county government considers that improvements to a national trunk road in its area would be</p>	<p>Currently as worded, the County consults with the Authority after it has made financial arrangements.</p>



		beneficial to the county road network, the county government may make financial arrangements with the relevant/ respective authority for the improvements to be made.”	We however propose that before a County even makes financial arrangements for a road, it must consult with the Authority.
26.	Section 75 (9).	Approval by Chief Executive.	We propose a change from the “Chief Executive” to the “Director General”.
27.	Section 75(10(b)).	Where an approval is sought and the Authority does not respond.	We propose a deletion of this subsection 10 in its entirety as there are a number of issues that the Authority needs to consider and silence cannot be implied to be consent.
28	Section 76.	County Government Powers.	We propose a deletion of the entire Section 76 which we opine will only serve to create confusion over the mandate of the Authority with regards to roads under its jurisdiction.
29.	Section 78 (4).	Notice required prior to removal or unauthorized and/or illegal structures on a road reserve.	We propose that where the structures have been erected without following the necessary procedure, the Authority be given the power to eject/ demolish the same without



			<p>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”.</p>	<p>notice and at the cost of the person who erected the same. This will improve on compliance.</p>
30.	Section 79(1).	Liability of Owner and Driver for damage.	<p>The Section provides that “ (1) Where a road is damaged—“ ... However, we note that “road” is not defined under the Act/Bill to include road furniture or at all.</p>	<p>We therefore propose to include the words “and road furniture” immediately after the word “road” .</p>
31.	Section 102 (5) (a).	Transitional Provisions- The Board.	<p>The Section Provides that “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;”</p> <p>This would adversely affect the operations of the Authority (ies) and we propose that the same be amended.</p>	<p>In this regard, we propose that this Section be amended to provide that the current Board Members shall complete their tenures and thereafter, their replacements be subject to the Act. The Boards ought not be dissolved as this will create a crisis in terms of Management of the Authority.</p>