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THE SENATE

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STANDING COMMITTEE ON ROADS AND TRANSPORTATION

**REPORT ON THE KENYA ROADS BILL (NATIONAL ASSEMBLY
BILLS NO.26 OF 2016)**

Clerk's Chambers,
Parliament Buildings,
P. O. Box 41842-00100,
NAIROBI.

*Rt. Hon. Speaker
You may approve
for tabling.
29/11/16*

*Approved
~~[Signature]~~
Speaker*

30th NOVEMBER, 2016

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ANNEXES

1. Minutes and Attendance Sheets
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ABBREVIATIONS AND ACRONYMS

COG	Council of Governors
CRA	Commission for Revenue Allocation
KAM	Kenya Association of Manufacturers
KeNHA	Kenya National Highways Authority
KenSRA	Kenya National Secondary Roads Authority
KenURA	Kenya National Urban Roads Authority
KEPSA	Kenya Private Sector Alliance
KeRRA	Kenya Rural Roads Authority
Kms	Kilometers
KRB	Kenya Roads Board
KURA	Kenya Urban Roads Authority
KWS	Kenya Wildlife Service

PREFACE

Mr. Speaker Sir,

The Senate Standing Committee on Roads and Transportation is established pursuant to standing order 208 of the Senate Standing Orders. It is mandated to consider all matters related to: *transportation and roads, public works, construction and maintenance of roads, rails and buildings, air, seaports, housing and communication.*

The Committee oversees the Ministry of Transport, Infrastructure, Housing and Urban Development.

Membership of the Committee

The Committee is comprised of the following Members:

- | | |
|--------------------------------|---------------------------|
| 1. Sen. Abu Chiaba Mohamed, MP | - Chairperson |
| 2. Sen. Judith Sijeny, MP | - Vice-Chairperson |
| 3. Sen. Kimani Wamatangi, MP | - Member |
| 4. Sen. Liza Chelule, MP | - Member |
| 5. Sen. Chris Obure, MP | - Member |
| 6. Sen. Hargura Godana, MP | - Member |
| 7. Sen. Moses Kajwang, MP | - Member |
| 8. Sen. Mike Sonko Mbuvi, MP | - Member |
| 9. Sen. Aaron Cheruiyot, MP | - Member |

Mr. Speaker Sir,

The Kenya Roads Bill (National Assembly Bills No. 26 of 2015), was introduced to the Senate by the Leader Majority Sen. (Prof.) Kithure Kindiki. The Bill seeks to give effect to the provisions of the Fourth Schedule in the Constitution of Kenya 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.

The Kenya Roads Bill (National Assembly Bills No. 26 of 2015), was read a first time in the Senate on 5th October, 2016 and thereafter stood committed to the Standing Committee on Roads and Transportation for consideration.

Pursuant to the provisions of Article 118(1) (b) of the Constitution and standing order 130(4) of the Senate Standing Orders, the Senate Standing Committee on Roads and Transportation invited interested members of the public to submit oral or written representations on the Bill via an advertisement in the Daily Nation Newspaper dated, 21st October, 2016 and the Standard Newspaper dated, 24th October, 2016.

The Committee held a public hearing on 26th October, 2016 at the Mini Chamber, First Floor, County Hall, Parliament Buildings. In addition to this, it held stakeholder consultative and consensus building meetings on 4th November, 2016 at the Windsor Hotel and on 8th November, 2016 at the Intercontinental Hotel respectively.

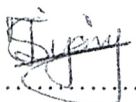
Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the conduct of the public hearings. The Committee further extends its appreciation to the members of the public and the various institutions and organizations that appeared before the Committee or submitted Memoranda to the Committee for their well-researched and eloquent submissions in this matter.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 134 (1), to present the Report of the Senate Standing Committee on Roads and Transportation on the Kenya Roads Bill 2016, National Assembly Bill No.26 of 2016, for consideration by the House.

- 1 Sen. Judith Sijeny, MP 
- 2 Sen. Chris Obure, EGH, MP 
- 3 Sen. Hargura Godana, MP 
- 4 Sen. Liza Chelule, MP 
- 5 Sen. Aaron Cheruiyot, MP 
- 6 Sen. Moses Kajwang, MP
- 7 Sen. Kimani Wmatangi, MP
- 8 Sen. Mike Sonko, MP

FOR  Signature..... Date..... 29/11/2016.....

FOR 
SEN. ABU-CHIABA, MP
CHAIRPERSON
STANDING COMMITTEE ON ROADS AND TRANSPORTATION

CHAPTER ONE INTRODUCTION

1.0 Background

The Kenya Roads Bill (National Assembly Bills No. 26 of 2015), was read a first time on 5th October, 2016 and thereafter stood committed to the Standing Committee on Roads and Transportation pursuant to Standing Order 130(1), for facilitation of public participation.

1.1 Object of the Bill

The Bill seeks to give effect to the provisions of the Fourth Schedule to the Constitution of Kenya in relation to the functions on roads and to review and rationalize the legal and institutional for the management of the road network in Kenya.

The Fourth Schedule distributes functions between the National and the County Governments. The transport function being one of the functions listed under the Schedule is a shared function between the two levels of Government.

The National Government under Section 18, Part I of the Fourth Schedule is mandated to deal with transport and communications, specifically-

- (a) The construction and operation of national trunk roads; and
- (b) Standards for the construction and maintenance of other roads by counties.

The County Governments on the other hand are mandated under Section 5 of Part II of the Fourth Schedule to deal with county transport including county roads. It is therefore necessary to classify these roads so that each level of Government can clearly identify which roads fall within its mandate.

The present legal framework including the Kenya Roads Act 2007 that was enacted before the promulgation of the Constitution of Kenya, 2010, does not recognize this new arrangement as regards the roads function. It is therefore imperative that a new law that recognizes the distinct functions between the two levels of Governments be enacted and the existing legal regime be repealed and others be amended to reflect this new constitutional order.

1.2 Overview of the Bill

The Bill gives provision to classification of roads as set out under the First Schedule. The Schedule classifies roads into three categories namely Primary National Trunk Roads which includes Classes S, A, B, H and J roads, Secondary National Trunk Roads which includes classes C and D roads and county roads which includes Classes E, F, G, K, L, M, N and P.

Under Part III of the Bill, the Cabinet Secretary shall be responsible for the assignment of a road into any one of the categories set out above. This classification may be carried out from time to time by the Cabinet Secretary or upon the request of an authority established by the Bill or a County Government submitting a request to the Cabinet Secretary for the classification of a newly established road.

Similarly, the Bill establishes various bodies for the management of roads, which include the Public Roads Standards Board, the Kenya National Highways Authority (KeNHA), the Kenya National Urban Roads Authority (KenURA), and the Kenya National Secondary Roads Authority (KenSRA).

The Bill in Clause 64, states that each Authority and each county government is required, not later than six months before the end of each financial year, to prepare and submit to the Kenya Roads Board, for approval, an annual road works programme

The Road investment programme established under Clause 65, outlines development and maintenance priorities costed with respect to stated sections of the road, and also aggregated by class, traffic loading or such other detail as may be specified. The Cabinet Secretary shall, once in every five years, in consultation with the national and county governments and the Kenya Roads Board, cause to be prepared a road investment program for approval by the Cabinet Secretary responsible for finance.

The Bill further provides that each county government is required under Clause 101, by county legislation, to establish a County Roads Agency as a department or division under the auspices of the County Executive Committee in charge of roads. The agency shall be responsible for the management, development and maintenance of County Roads.

The Bill seeks to amend the Kenya Roads Board Act to provide for the allocation of the Roads Fund by providing that no more than-

- (a) 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;
- (b) thirty (30%) per centum is allocated to the Kenya National Secondary Roads Authority in respect of secondary national trunk roads and the said per centum shall be equally distributed to the Constituencies;
- (c) ten (10%) per centum is allocated to the Kenya National Urban Roads Authority
- (d) fifteen (15%) per centum is allocated to the county governments equally in respect of county roads; (5) one (1%) per centum is allocated to the Kenya Wildlife Services in respect of roads in national parks and reserves;

- (e) six (6%) per centum is allocated annually by the Board with the approval of the Cabinet Secretary to priority projects derived from the road investment programmes including support road standards, technical assistance and shall include –
 - (i) one (1%) per centum for material development; and standards development
 - (ii) one (1%) per centum for material research and testing;
- (f) one (1%) per centum to be allocated to the National Transport and Safety Authority to support road safety programmes; and
- (g) two (2%) per centum to the Kenya Roads Board in respect of the recurrent expenditure of the Board.

1.3 Consequences of the Bill

The Bill seeks to repeal the Kenya Roads Act 2007 and amend the Kenya Roads Board Act No. 7 of 1999 and the Physical Planning Act No.6 of 1996. The Bill will also affect the way counties currently undertake their roads function as they will be required to adhere to standards set by the Cabinet Secretary and to also seek for approvals from the relevant Authority if it intends to carry out road works on a county road where such works would have an effect on a national trunk road or a future national trunk road.

1.4 Methodology

The Committee considered the Bill and made a number of observations regarding their provisions. Subsequently, as per the provisions of Article 118 of the Constitution and Standing Order 130 (4), the Committee identified a number of key stakeholders that were critical stakeholders in the roads sector that it needed to engage and set a date to receive submissions from Members of the public, through an advertisement in the Daily Nation Newspaper dated, 21st October, 2016 and the Standard Newspaper dated, 24th October, 2016.

Following the advertisements, the Committee received written submissions on the Bills and held a public hearing on 26th October, 2016 at the Mini Chamber, First Floor, County Hall, Parliament Buildings. In addition to this, it held stakeholder consultative and consensus building meetings on 4th November, 2016 at the Windsor Hotel and on 8th November, 2016 at the Intercontinental Hotel respectively.

The Committee, during its Sittings held on 17th November, 2016 and 22nd November, 2016 considered the submissions from the public hearing, consultative and consensus building meetings and made recommendations for amendments to the Bill to be moved at the Committee Stage.

CHAPTER TWO PUBLIC PARTICIPATION

2.0 Introduction

The Committee, pursuant to Article 118 of the Constitution and Standing Order 130 (4), invited submissions from members of the public on the Bill via an advertisement on the Daily Nation Newspaper of 21st October, 2016 and the Standard Newspaper of 24th October, 2016.

The Committee held a public hearing on 26th October, 2016, at the Mini Chamber, First Floor, County Hall, Parliament Buildings. The Committee received both oral and written submissions from public and stakeholders. These included the Council Of Governors (COG), Representatives from the National Road Agencies at the Ministry of Roads and Infrastructure who included Kenya National Highways Authority (KeNHA), Kenya Rural Roads Authority (KeRRA), Kenya Urban Roads Authority (KURA), Kenya Private Sector Alliance (KEPSA), Commission on Revenue Allocation (CRA), Kenya Association of Manufacturers (KAM), Matatu Welfare Association and the Kenya Forest Service.

Further the committee engaged the stakeholders in a consultative and consensus-building forum at the Windsor Golf and Country Club on 4th November 2016. Thereafter the committee met with the Council of Governors, representatives from the various County Governments and representatives from the Ministry of Transport and Infrastructure at the Intercontinental Hotel on 8th November 2016 to further build consensus on the various contentious issues in the Bill.

2.1 Submissions from Stakeholders

Members of the public made their submissions as tabulated below-

O	CLAUSE OF THE BILL	STAKEHOLDER	SUBMISSION BY STAKEHOLDER	JUSTIFICATION GIVEN BY THE STAKEHOLDER
Classification of Roads – Clause 2, Part III and the First Schedule				
	Clause 2 – definitions of national trunk roads and county roads	COG	<p>Amend the definitions as follows-</p> <p>“National trunk roads” means the main roads linking Kenya to her neighbors, directly, connecting various county headquarters and interconnecting the entire country in an equitable and well distributed manner, classified as such under Part A of the First Schedule</p> <p>“County roads” means all public roads running primarily within the boundaries of a county including primary roads linking sub-county headquarters, secondary and minor roads linking markets, administrative centers and locally important centers classified as such under Part B of the First Schedule.</p>	Inter-county roads are not national roads
	Clause 10(2) on requests for classification of roads	Council of Governors (COG)	Rephrase the clause to read “where a new road is established, the responsible authority or county government shall classify and assign roads as per the classification and submit to the Cabinet secretary for national inventory and mapping	County governments have the authority to classify and assign county roads within their jurisdiction and to submit their classifications for inventory purposes.
	Clause 10(3) on review of the	COG	Amend the section to read “the Cabinet Secretary in consultation with the respective authority or	The cabinet secretary should not have unfettered discretion over county functions

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	classification of roads		county governments review...	
	Third Schedule	COG	<p>Amend the classification of roads as follows-</p> <p><i>Primary National Trunk Roads classes S, A, B, H and J:</i></p> <ul style="list-style-type: none"> • Class H roads with are classified as county roads should be classified as county Roads not Primary National Roads • Class J roads with are classified as county roads should be classified as county Roads not Primary National Roads <p><i>Secondary national trunk roads Classes c and D</i></p> <ul style="list-style-type: none"> • Classes C and D roads should be classified as county roads <p>County Roads should therefore comprise classes C, D, E, F, G, H, J, K, L, M, N and P roads</p>	Surrender of functions after the end of the transitional period should be through the Constitution. There is no basis for reclassification of the roads after the transitional period. This can only be done through Article 187 of the Constitution
	Classification of roads	COG	<p>Only KENHA should exist to control national government roads</p> <p>KENHA should not control outdoor advertising together with parking in the counties</p>	Consequential amendments

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	Classification of roads	KURA	The gazetted National Urban Roads (UCA and UCB) are classified as H and J in the Bill. We therefore propose that the road classification in the two documents be harmonized accordingly.	This amendment seeks to incorporate important and critical elements that outline the purpose of the Bill by way of adding additional objects
	Clause 19 on the Functions of the Kenya National Secondary Roads Authority	Commission on Revenue Allocation	Following the reclassification and assignment of class D Roads to County Governments through Kenya Gazette Supplement no. 4 of 2016, clause 19 of the Bill be amended by deleting the words "and D" In line with this proposal, amend the First Schedule of the Bill on Classification of Public roads by moving class D Roads to Part B on County Roads	This is in line with the County Governments through Kenya Gazette Supplement no. 4 of 2016
Other provisions				
	Clause 7(3)	Ministry of infrastructure, housing and urban development, state department of infrastructure	Amend to Read " <i>shall be responsible for the secretariat and the administrative function of the Board</i> "	This is a full-time Board and therefore it needs the necessary technical support.
	Clause 9 (2)	KEPSA	Amend the clause to provide that in preparing, reviewing or amending the national road standards, the Cabinet Secretary shall, in such manner as the Cabinet Secretary determines, conduct prior	It is important to explicitly state engineering associations, Utility and amenity providers, academia including the Private Sector since these are the ones who are likely to be affected by the

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			consultations with- (f) the relevant Engineering Associations, Utility and amenity providers, academia including the private sector	Cabinet Secretary's decision(s) and thus have a legitimate stake in his decisions
0.	Clause 9(3)	KEPSA	Amend clause 9(3) to provide that the Cabinet Secretary shall publish in the Gazette, the National road standards upon debate and adoption by Parliament.	It is important to oversight the Cabinet Secretary's decision and the role of Parliament is critical in ensuring there is accountability on his decisions
1.	Clause 14 (f)	KEPSA	The Board of the Kenya National Highways Authority to consist of the following members- (f) Six persons nominated by the following i. Institution of Engineers of Kenya ii. Association of Consulting Engineers of Kenya iii. Institute of Surveyors of Kenya iv. Kenya Private Sector Alliance; v. Chartered University, offering accredited civil engineering courses whose nominee should be a registered Engineer with specialty in roads and highways	This will make the Authority more representative and ensure that it is able to draw on key competencies from the organizations represented herein which will assist it undertake and discharge its mandate more effectively
2.	Clause 14 (f) which provides for the	Kenya Association of Manufacturers	That this provision be amended by insertion of the following new sub-paragraph;	The previous Roads Act of 2007, recognized "industry" participation in the Kenya National Highway Authority

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	Board of Kenya National Highways Authority		<i>“Kenya Association of Manufacturer”</i>	<p>and subsequently KAM was nominated to represent industry.</p> <p>The current Roads Bill, 2015 was amended and excluded KAM.</p> <p>Manufacturers provide technical support to the Board with regard to the management and development of Roads national. In addition, KAM has an infrastructure Committee, made up of several manufacturing organizations appropriate strategic plans.</p> <p>For manufacturers, continued participation in the Board ensures that manufacturers support the proper implementation of Governments road subsector policy in place to ensure sustained growth within the industry.</p> <p>Kenya Association of Manufacturers (KAM) has over 850 members comprising of pure value addition manufacturing companies are the main exporters of products made in Kenya and who use our roads on a daily basis. In the past, KAM has been part of the Kenya National Highways Authority (KENHA) and Kenya Urban</p>

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				<p>and Rural Roads (KURA) Boards.</p> <p>Through being part of the Boards, valuable results have yielded to Kenyans through strategic advice provided by KAM on construction and repair of roads as well as the harmonization of the East Africa Community Axle Load control Laws. Adherence to the Axle Load Control is one of the functions of the Authority under the Bill.</p> <p>Further, all the institutions listed in sub-paragraphs (i), (ii), (iii) and (iv) are all members of KEPSA. KEPSA represents a number of sector specific basic business membership. Organizations and each represents its constituents on specific issues.</p>
3.	<p>Clause 12 (4) on the number of names to be submitted the Cabinet Secretary</p>	KAM	<p>We propose substituting the words three names and replace with one name to read as follows:</p> <p><i>1. Delete the word three and replace with one;</i></p> <p><i>“The nominating Organization specified under sub section (1) shall submit one name of the candidates approved at</i></p>	<p>Nominating organizations should be allowed the mandate to nominate their own representatives who should not be subjected to another nomination.</p> <p>The process of nomination during an annual general meeting is a conclusive enough to ensure a competent and fully endorsed member from the</p>

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			<p><i>their respective annual general meeting for appointment by Cabinet Secretary.”</i></p> <p><i>Delete the words “provided that only one candidate shall be eligible for appointment by Cabinet Secretary in accordance with sub section (1)”</i></p>	nominating organizations.
4.	Clauses 15	COG	<ul style="list-style-type: none"> • Delete the establishment of the Kenya National Urban Roads Authority 	The proposed authority is unconstitutional as it seeks to wield control over county roads which is a function assigned by the Constitution
5.	Clause 15	KEPSA	Supports the establishment of the Kenya National Urban Roads Authority	<ul style="list-style-type: none"> • The country is urbanizing at a very high rate due to the effects of devolution and the normal rural-urban migration • Traffic congestion is a major challenge to the Kenyan economy and Urban areas and towns carry about 70% of all vehicles registered in Kenya • The growth of cities and towns demands commensurate transport facilities and to ensure urban centers are livable, providing quality and healthy lives to the citizens • Since its establishment, KURA has built valuable capacity in the provision of urban roads transport

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				<p>facilities and addressed associated challenges</p> <ul style="list-style-type: none"> The potential of conflict between national and county governments in the management of urban roads may result in some roads being undeveloped <p>Designs standards for urban roads are based on specific guidelines designs and/ standards as opposed to Rural and National Trunk roads. (<i>National trunk roads emphasize high-speed flow with or without access requirements while urban designs emphasize on mobility, access and safety.</i>)</p> <p>County governments are not capable of borrowing money without national government guarantee. As such they would not be able to access adequate resources for the development and the maintenance of the urban roads.</p>
6.	Clause 15	Matatu Welfare Association	<p>Supports the establishment of the Kenya National Urban Roads Authority</p> <p>Matatu Welfare Association should also be represented in the Board of the Kenya National Urban Roads Authority</p>	<p>The execution of the roads function without the three roads authorities is likely to overwhelm the ministry</p>

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7.	Clause 15	KURA	<p>Supports the establishment of the Kenya National Urban Roads Authority</p> <p>Further: The Bill as proposed could function better with adjustments to the composition of the Board of Directors of the Urban Roads Authority by dropping representative of the Law Society of Kenya (iii) and Institute of Certified Public Accountants of Kenya (ii) and including members from the following key stakeholders:</p> <ol style="list-style-type: none"> 1. Principal Secretary for the Ministry in charge of Devolution; 2. Registered Public Transport Organization to represent major users of the road infrastructure; and 3. An Association for the time being recognized by the Government as representing the interests of County Governments to facilitate consultations between the two levels of government. 	<p>Urban roads are unique in nature in terms of design and characteristics e.g. need for traffic signals, trams, interchanges etc and therefore a national authority should address the uniqueness.</p> <p>The global trend is that urban authorities undertake the development and maintenance of urban. Further, there is need to standardize the road network for urban areas</p> <p>Composition of the Board of the Authority – Ministry of devolution to be added to the membership of the Board Representative from the public transport sector Association recognized by the Government as a representative of the counties (the association of the local authorities)</p>
8.	Clause 22	KEPSA	16. (1) A person shall be qualified for appointment as a chairperson or a member	The proposed amendments seek to ensure that an appointee to the position of

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			<p>of the Board under Clauses 11 and 14 if that person-</p> <p>a) Holds a Civil Engineering degree from a recognized university, specialized in roads, highways and / or bridges and is registered by Engineers Board of Kenya.</p> <p>b) Has knowledge and experience of at least ten years in a relevant field.</p> <p>c) Meets the requirements of Chapter Six of the constitution.</p>	<p>Chairperson has the necessary professional competencies to enable him discharge his responsibilities more competently and effectively</p>
9.		COG	<ul style="list-style-type: none"> Delete the establishment of the Kenya Secondary Roads authority 	<p>The authority is unconstitutional as it seeks to have control over county roads. Class D roads fall under county Roads. Consequently, as established, the Kenya National Secondary Roads Authority us a national body purporting to exercise control over county roads and county governments.</p>
0.	Clauses 17 and 20	Ministry of Devolution	<p>In the membership of the Boards to the authorities, add the following-</p> <p>(1) The principal secretary in the Ministry responsible for devolution</p> <p>(2) The Chief Executive Officer of the association</p>	

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			<p>representing county governments</p> <p>(3) A representative of the Private Transport Sector nomination by the Transport Associations</p>	
21.	<p>Clause 19 (1) which provides for The Board of the Kenya National Secondary Roads Authority</p>	<p>Kenya Association of Manufacturers (KAM)</p>	<p>We propose that this provision be amended by inserting a new subparagraph (vii) to read <i>“Kenya Association of Manufacturers”</i>.</p>	<p>In the past, KAM has been a part of KENHA and KURA Boards. Through being part of the Boards, valuable results have yielded to Kenyans through strategic advice provided by KAM on construction and repair of roads as well as the harmonization of East Africa Community Axle Load Control Laws.</p> <p>Inclusion of KAM to the Board would add value in the voice of manufacturers and exporters who comprise KAM’s membership and who use this class of roads on a daily basis. Manufacturers form the greater percentage of users of the roads in Kenya who generate the greater volumes in income to our economy.</p>
22.		<p>KEPSA</p>	<p>Clause 14(1) (f) The Board of the Kenya National Secondary Roads Authority shall consist of the following members – (f) Six persons nominated by the following organizations. i. Institute of Engineers of Kenya (IEK)</p>	<p>To make the authority more representative and to remove bodies that do not directly contribute to the management of Roads</p>

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			<ul style="list-style-type: none"> ii. Association of Consulting Engineers of Kenya (ACEK) iii. Institute of Surveyors of Kenya iv. Kenya Institute of Physical Planners v. Kenya Private Sector Alliance vi. Chartered University, offering civil Engineering courses whose civil engineers with specialization in roads and highways 	
23.	Clauses 41-46 on the general powers of an authority	COG	Reword to insert the phrase "in consultation with the county government"	In cognizance of the fact that all roads run through counties
24.	Clause 67	COG	<p>This section provides that each authority may, subject to the approval of the cabinet secretary, impose any levy, charges or fees for the is of road reserves under their jurisdiction.</p> <p>County governments should be consulted</p> <p>Also, delete the phrase "...or for the use of road reserves..."</p>	Road reserves are under counties and the authority cannot impose any fees on them without the approval of the county governments
25.	Clause 45	KEPSA	Clause 45 (2) Where an	The authorizations and

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	(2)		<p>infrastructure utility is located within a road reserve, the provider or operator of the infrastructure utility shall, on a written request by the respective Authority, relocate such infrastructure utility to a location or alignment approved by the Authority</p>	<p>permits issued by the roads agencies confer property rights on the owners of the infrastructure under the new Constitution. This is to the extent that the constitution recognizes contingent and vested interests. Clause 45 (2) contradicts Article 40 (4) of the Constitution in so far as it requires the operator to relocate its infrastructure on road reserves at its cost. As operators we are incurring millions of dollars in this exercise every year. It is becoming untenable for the private sector to continue subsidizing road expansion projects. We demand that the words 'at no cost to the Authority' in Clause 45(2) be deleted so that the roads agencies are liable to compensate for relocation costs as is the case with the Kenya Railways Corporation Act</p>
6.	Clause 47	Engineer Kiarie Mwangi	Water Act 2002 –there is a new Water Act in place	
7.	Clause 45(3)	KAM	<p>Clause 51 (3) extend the proposed days to be 120 days.</p> <p>Insert a new clause that provides;</p> <p>“The infrastructure utility shall be returned in the same condition in which it was originally before</p>	<p>The sixty days proposed in which a person shall cause to be removed infrastructure utility is not adequate.</p> <p>This is because of the financial and technical implication to the person to relocate, move or transfer the infrastructure utility.</p>

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			relocation. In the case where the returning of the infrastructure utility cannot be re-instated to its original state is not possible, the authority shall evaluate the loss and compensate the infrastructure utility owner.”	In addition, this is to ensure that business continues as usual, since the relocation or movement of infrastructure utility usually causes disruption of business.
28.	Clause 55	Engineer Kiarie Mwangi	Clause 54(2) refer to Ferry services which might become a conflict with "Kenya Ferry Services" mandates	
29.	Clause 67	KEPSA	Clauses 67 of the Roads Bill empower the Authorities created and established under the Bill to impose charges, levies and fees for roads under their jurisdiction. There is need to harmonize these provision with other laws to avoid double payment similar charges, levies and fees imposed by County Governments.	In view of the fact the roads agencies are charged with the responsibility of managing and administering roads and they are paid for authorization and permits to lay FOC, County Governments should not be allowed to demand annual way leave fees and break open permit charges for relocating and installing infrastructure. The duplication of such charges, fees and levies is punitive and discourages the roll out of critical infrastructure in certain Counties, especially since the charges vary from County to County and tend to have no correlation. Under Article 62 (3) of the Constitution the roads are vested in the national government and not the Counties yet the latter still

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				impose these fees, levies and charges.
30.	Clause 67	COG	Provides that the section be amended to Read "each authority may, subject to the approval of the Cabinet Secretary in consultation with and the approval of the attendant county government, impose any levy, charges or fees for the use of road reserves under their jurisdiction. Provided that the said levies charges or fees do not relate to outdoor advertising, street lighting, traffic and parking	Pursuant to section 5 Part II of the Fourth Schedule of the Constitution and fortified by the decision of the Court in Petition No. 472 of 2014 COG v AG and others, 'outdoor advertising on road reserves are by county governments. As such, no authority can purport to impose any fees for the use of the said reserves for outdoor advertising, street lighting, traffic and parking without consultation and approval of the respective county government
31.		Timeline for issuance of permits	KEPSA	The Bill does not impose any timeline on the issuance of authorizations and permits and refund of deposits. As a result, authorizations are sometimes delayed for up to 12 months at KENHA without any obligation on their part to act. It is proposed that a timelines of 30 days be imposed within which to issue permits and refund deposits.
32.	Clause 81	Engineer Kiarie Mwangi	"Municipality" has been replaced. Kindly check the most appropriate currently -should be "Town".	
33.	Clause	Ministry of	Delete the current clause	This is to recognize the

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	100 (2)(f)	infrastructure, housing and urban development, state department of infrastructure	(2)(f) and substitute therefor the following clause- Overseeing the management of traffic and road safety on county roads in collaboration with the national government	National Government's mandate under the Fourth Schedule item 18 Clause (a) Road traffic and (c) Standards for the construction and maintenance of roads by counties
34.	First Schedule	Engineer Kiarie Mwangi	References to Municipal/Municipality - They are now referred to Cities, Towns, Market Centers, etc	

Allocation of the Roads Fund

35.	Third Schedule	Council of Governors	Consequential amendments to item (3) on the 32% allocation of the Roads levy to the Kenya National Secondary roads authority With deletion of the category, CRA to come up with a formula to be applied in sharing the 32% allocation from the Roads fund channeled towards the Kenya Secondary Roads Authority Counties to receive commensurate share allocated to H, J and D which should be added to the 15% allocated to the counties	This provision contravenes the mandatory requirement of equitable sharing of revenue between the national and county governments enshrined under Article 201 of the Constitution. Further, this would be necessary if the clauses establishing the secondary Roads authority were removed.
36.	Third Schedule: Item (6)(a)	Ministry of infrastructure, housing and urban development, state department of infrastructure	Under the provision Item (6)(a) 1% for material development replace with One (1%) per centum for standards development; and	This is a provision for the standards board administration under the State Department of Infrastructure Setting of standards requires funding

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				The rest of the allocation is justifiable since Class A, B and C Roads require 1.5 million shillings per kilometer while rural roads require 6,000-100,000 shillings per kilometer
37.	The Third Schedule	Commission of Revenue Allocation	<p>In line with the provisions of Kenya Gazette Supplement No.4 of 2016 which transferred 39,984 km of Roads to the national Government and 121,456 km of roads to the counties, the third schedule be amended as follows-</p> <ul style="list-style-type: none"> • Kenya national Highways Authority - 40% • Kenya National Secondary Roads Authority - 11.53% • Kenya Urban Roads Authority - 10.2% • County Governments - 25.27% • National Park Roads - KWS - 1% • Kenya Roads Board Operations - 2% • Kenya Roads Board / CS allocation - 10% 	This would accord with the criteria that was approved by Parliament on the classification of Roads
38.	The Third Schedule (s.104) (6)	Engineer Kiarie Mwangi	The Third Schedule (s.104) (6) the breakdown does not add to 6 % but 5%.	
39.	Third Schedule: Item (6)(a)	Ministry of infrastructure, housing and urban	Under the provision 1% for research and testing replace with One (1%) per centum for	

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		development, state department of infrastructure	material testing and research	
40.	Third Schedule	Kenya Forest Services	<p>Focuses on forest management and conservation and have over 6,000 km of Road. They should be accorded the same treatment as KWS is a designated agency under the Bill and has 6,000km under its mandate.</p> <p>Need to improve forest roads for security e.g. Boni forest, farming, access for communities living around forests, ecotourism, and to enable disaster management during the fire seasons (dry season).</p>	
41.	Third Schedule	Engineer Kiarie Mwangi	Engineer Kiarie Mwangi "Kenya Wildlife Service" to "Kenya Wildlife Services" - they are being used interchangeably	
42.	Formula for 15% of the RMLF allocation to counties	COG	<ul style="list-style-type: none"> • The 15% was first based on the constitutional threshold. • RMLF is meant for maintaining maintainable road network not for developing new roads • County Roads have low volume of traffic and indeed 80% of the traffic volumes in the Country use the national trunk roads 	

NO	CLAUSE OF THE BILL	STAKEHOLDER	SUBMISSION BY STAKEHOLDER	JUSTIFICATION GIVEN BY THE STAKEHOLDER
			<ul style="list-style-type: none"> Counties were given 28 Billion to develop roads in the counties 	

Consequential

43.	Long title	KEPSA	<p>Amend the long title to the Bill to read as follows-</p> <p>A Bill for an Act of Parliament to provide for the classification, planning, design, construction, maintenance and management 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</p>	
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2.2 Consensus Building and Stakeholder Consultations

During the stakeholder consultative and consensus building meetings held on 4th November, 2016 at the Windsor Hotel and on 8th November, 2016 at the Intercontinental Hotel, stakeholders discussed the contentious clauses and consensus was built as tabulated below-

NO.	CLAUSE OF THE BILL	STAKEHOLDER	STAKEHOLDERS' CONSENSUS/ RECOMMENDATIONS
1.	Long title	<p>KEPSA proposed amendment of the long title to the Bill to read as follows-</p> <p>A Bill for an Act of Parliament to</p>	Accepted

NO.	CLAUSE OF THE BILL	STAKEHOLDER	STAKEHOLDERS' CONSENSUS/ RECOMMENDATIONS
		provide for the classification, planning, design , construction, maintenance and management 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	
2.	7(1)(c) composition of the Roads Standards Board	That the Council of Governors replaces the Intergovernmental Technical Relation Committee	Accepted
3.	7(3) – Secretariat to the Board	The Ministry proposed the be amended to add the words “ <i>shall be responsible for the secretariat and the administrative function of the Board</i> ”	Accepted
4.	10(2) – new roads	COG proposed to retain the initial proposal on the basis that county governments have the authority to classify and assign county roads within their jurisdiction and to submit their classification for inventory purposes	The Committee recommended that the Counties suggest new roads then consult with the Cabinet Secretary for classification, but the Cabinet Secretary ultimately classifies
5.	10(3) – review of classification	Amend the section to read “ <i>the Cabinet Secretary in consultation with the respective authority or county governments review...</i> ” COG proposed to retain the initial proposal on the basis that county governments should not have unfettered discretion over county functions and that the clause enables the Minister to recentralize roads.	Accepted

NO.	CLAUSE OF THE BILL	STAKEHOLDER	STAKEHOLDERS' CONSENSUS/ RECOMMENDATIONS
6.	37-annual reports	<p>The Boards observed that clause 37(2)(b) as currently stated is unworkable because it is not possible to submit audited accounts within 4 months of end of a financial year since the auditor general produces reports after 6 months and proposed the following options-</p> <p>(a) Extend the period to 6 months (b) Provide for submission of unaudited accounts; or (c) Provide for submission of audited accounts for the previous year</p>	Consensus was reached that the period be extended to 6 months
7.	41-acquisition of land	<p>COG proposed that counties should be conferred with the statutory powers of compulsory acquisition of public land for road construction within their respective constitutional authority. Both levels should exercise this power in consultation with the National Land Commission</p>	Accepted
8.	56-road user charges	<p>The Committee was of the view that these charges should be imposed for pub-private partnerships for recovering construction costs</p> <p>Ministry submitted that these charges are futuristic and would be applied for purpose of infrastructure financing services</p>	Consensus was reached that the clause remain as is in the Bill
9.	64 and 65 - Annual Road Works programme and Road investment programme	<p>The Ministry stated that all recipients of the Road Fund are under a fiduciary duty to account to the Kenya Roads Board</p> <p>CRA proposed that the clause be amended to provide that counties should submit their plans but not for approval but for the information of the Kenya Roads Board</p> <p>It was proposed that the clauses could be redrafted to require the authorities</p>	Consensus was reached, that the Article remains as is in the bill

NO.	CLAUSE OF THE BILL	STAKEHOLDER	STAKEHOLDERS' CONSENSUS/ RECOMMENDATIONS
		<p>to submit their plans for approval but that the counties should “<i>cause their plans to be prepared, approved and thereafter submit to the Roads Board for consolidation...</i>”</p> <p>COG stated that a requirement for such approval amounts to micromanagement of the counties by the national government</p>	
10.	<p>Clause 101 establishment of county road agencies</p>	<p>CRA noted that this requirement was not necessary</p> <p>The Ministry stated that this was to ensure that counties had institutions dedicated to the roads function</p> <p>COG stated that this amounted to micromanagement of the counties and that the counties should be left to determine their own internal structures</p>	<p>Consensus was reached to delete clause 101</p>

CHAPTER THREE COMMITTEE OBSERVATIONS

3.0 Introduction

The Senate Standing Committee on Roads and Transportation made the following observations during its deliberations on the Bill and submissions made stakeholders-

- (i) The establishment of a Public Road Standards Board is necessary to ensure standards in the road sector are maintained at both National and County level;
- (ii) Various submissions had been made on this issue particularly the proposal classification of class H, J and C Roads. Classification of roads in the Bill appears to be the unilateral function of the Cabinet Secretary;
- (iii) Noting that the Bill provides that KENHA is responsible for controlling primary national trunk roads and road reserves and access to roadside developments. There is need to ensure that this does not overlap with the functions of counties particularly, outdoor advertising, traffic lights and parking;
- (iv) There is need to review the composition of the various boards of the agencies proposed in the Bill in terms of numbers and strategic institutions to be represented therein.
- (v) The qualifications of the chairpersons of the boards, the person needs not to have a degree in Civil Engineering, as this was an administrative function;
- (vi) The Bill in Clause 64 requires counties to submit Annual Road Works Programme to the Kenya Roads Board for approval as well as their Road Investment Programmes in Clause 65. The Committee noted that all recipients of the Road Fund are under fiduciary duty to account to the Kenya Roads Board. The requirement therefore should not be deemed to micro manage County Governments, since these are conditional grants;

- (vii) The Bill provides for the imposition of fees and charges by national road authorities for the use of road reserves in Clause 67. The Committee noted that the Constitution and the Petition no 472 of 2015 clearly state that outdoor advertising on all road reserves is the mandate of County Governments;
- (viii) The Bill requires counties to establish roads agencies in Clause 101. The Committee noted that a different mechanism currently exists under which counties are managing the roads under their mandate. Hence counties should not be required to establish road agencies unless where needed;
- (ix) In the spirit of facilitating consultation between the two levels of government, bureaucracy should not be created that will incapacitate counties from executing their constitutional mandate; and
- (x) The Committee observed that the Roads Maintenance Fund is for maintenance of roads and therefore should be allocated to serviceable roads not roads needing development. Therefore the committee was of the view that NTSA should not receive the funds and neither should the Kenya Forest Service until the 8000 kms under their mandate are gazetted.

CHAPTER FOUR COMMITTEE RECOMMENDATIONS

The Committee recommends as follows-

1. That the definition of “National Trunk Road” and “County Roads” be retained as is in the Bill;
2. That the Council of Governors be represented on the Public Roads Standards Board. This is to ensure roads standards are maintained on both National and County Roads;
3. That Classes S, A, B, H, J, C, roads be maintained as National Trunk Roads and Classes D, E, F, G, K, L, M, N and P as County Roads, pursuant to the High Court Ruling on Petition No.472 of 2014 by the Council of Governors vs Attorney General and other stakeholders on Classification of Roads (and the subsequent Gazette Notice No.4 of 2016 that classified class D roads as county roads. In this regard, there will be need to amend the First Schedule of the Bill so as to remove class D roads under the province of the National Government and to put them under the county governments;
4. That the Cabinet Secretary in consultation and concurrence with the county governments conducts the classification of roads. This will ensure that duplication of tasks and conflicts between the two levels of Government are avoided. In this regard, there will be need to amend clause 10(2) of the Bill to provide for consultation with the County Government;
5. The establishment of Kenya National Highways Authority (KeNHA), Kenya National Urban Roads Authority (KenURA) and Kenya National Secondary Roads Authority (KenSRA) is maintained;
6. That 15% of the allocation to KESRA be equally distributed to the various regions under its mandate;
7. That the Kenya Transporters Association and KAM be included on the Board of KeNHA and that KEPSA should be removed;

8. That the Institute of Surveyors of Kenya should be removed from the board of KenURA and the Matatu Welfare Association and the Kenya Alliance of Resident Associations be represented on the board of KenURA;
9. That the Kenya Institute of Physical Planners should be removed from the board of KenSRA and that the Kenya Farmers Association and Kenya Association of Manufacturers be represented on the board of KenSRA;
10. That counties are conferred with the statutory powers of compulsory acquisition of public land for road construction within their respective constitutional authority, in Clause 41 of the Bill on acquisition of land. Both levels of government should exercise this power;
11. That counties may impose any levy, charges or fees for use of road reserves under their jurisdiction, pursuant to Clause 67 of the Bill. This will ensure that counties maintain their mandate on outdoor advertising, street lighting, traffic and parking without consultation and approval of respective national government agencies. In respect to National Trunk roads, that approval is sought from the relevant National Road agency, and consequently the fees and charges therein paid to the respective County Government;
12. That Clause 101 of the Bill with regards to County Government managing roads under their mandate within already established mechanism or establish road agencies at County level as such, the Clause be deleted to avoid micromanagement of counties on administrative matters; and
13. That the distribution of the Roads Maintenance Levy Fund be as follows-
 - 40% to KeNHA
 - 15% to KeNSRA
 - 10% to KeNURA

- 26% to County Governments equally in respect to County Roads
- 1% to KWS
- 6% to the Board with approval of the Cabinet Secretary to priority projects derived from the road investment programme, including support road standards, technical assistance of which shall include- 1% to standards development; and 1% to material research and testing; and
- 2% to Kenya Roads Board.