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TWELFTH PARLIAMENT- THIRD SESSION

THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND
HOUSING

REPORT ON THE CONSIDERATION OF THE KENYA ROADS BOARD
(AMENDMENT) BILL, 2019

(NATIONAL ASSEMBLY BILL NO. 77 OF 2019)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	04 DEC 2019
	DAY: <u>WED</u>
TABLED BY:	HON DAVID PROSING CHAIRPERSON
CLERK-AT THE-TABLE:	W. NBINBIRI

*Approved for table
4/12/19
DSNA*

DIRECTORATE OF COMMITTEE SERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

DECEMBER 2019

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CHAIRPERSON' S FOREWORD

This report contains the proceedings of the Departmental Committee on Transport, Public Works and Housing on its consideration of the Kenya Roads Board (Amendment) Bill, 2019 (National Assembly Bill No. 77 of 2019), which was read a first time on 20th November, 2019 pursuant to Standing Order 127.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the print media on 27th November, 2019 pursuant to Article 118 of the Constitution. By the time the Committee was considering the Bill, it had received both oral and written memoranda the Bill. The Committee put all the stakeholders' comments into consideration while considering the Bill.

On behalf of the Departmental Committee on Transport, Public Works and Housing and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Kenya Roads Board (Amendment) Bill, 2019 (National Assembly Bill No. 77 of 2019).

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank the sponsor of the Bill, Hon. Aden Duale, EGH, M.P. Leader of the majority party, and the stakeholders who responded to the Committee's call for memoranda.

Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Departmental Committee on Transport, Public Works and Housing has considered the Kenya Roads Board (Amendment) Bill, 2019 (National Assembly Bill No. 77 of 2019) and has the honour to report back to the National Assembly with the recommendation that the Bill be **approved with amendments**.

HON. DAVID PKOSING, CBS, M.P



EXECUTIVE SUMMARY

The Kenya Roads Board (Amendment) Bill, 2019 (National Assembly Bill No. 77 of 2019), which was published on 17th November, 2019 and read a first time on 20th November, 2019 and thereafter committed to the Departmental Committee on Transport, Public Works and Housing for consideration pursuant to Standing Order 127.

The principal object of this Bill is to amend the Kenya Roads Board (Amendment) Act, 1999. The Bill seeks to exempt development budget and any funds raised through borrowing from the funds allocation formulation specified in the Act. The amendments further give the Kenya Roads Board power to borrow and leverage on the Kenya Roads Fund.

The Committee considered all the submissions before making its recommendation.



1.0 PREFACE

1.1 Mandate of the Committee

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

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

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

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

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

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



1.2 Committee Membership

The Departmental Committee on Transport, Public Works & Housing was constituted by the House on Thursday 14th December 2017 comprising of the following Members–

Chairperson

Hon. David Pkosing, M.P. CBS
Member for Pokot South Constituency

Jubilee Party

Vice-Chairperson

Hon. Moses Kuria, M.P.
Member for Gatundu North Constituency

Jubilee Party

Members

Hon. Dominic Kipkoech Koskei, M.P.
Member for Soitik Constituency

Jubilee Party

Hon. Peris Tobiko, M.P.
Member for Kajiado East Constituency

Jubilee Party

Hon. Kulow Maalim Hassan, M.P.
Member for Banisa Constituency

Economic Freedom Party (EFP)

Hon. Mugambi Murwithania Rindikiri, M.P.
Member for Buuri Constituency

Jubilee Party

Hon. Samuel Arama, M.P.
Member for Nakuru Town West

Jubilee Party

Hon. Shadrack John Mose M.P.
Member for Kitutu Masaba Constituency

Jubilee Party

Hon. Rigathi Gachagua M.P.
Member for Mathira Constituency

Jubilee Party

Hon. Rehema Dida Jaldesa M.P.
Member for Isiolo County

Jubilee Party

Hon. Savula Ayub Angatia M.P.
Member for Lugari Constituency

Amani National Congress Party

Hon. Ahmed Bashane Gaal M.P.
Member for Tarbaj Constituency

Peoples Democratic Party

Hon. David Njuguna Kiaraho M.P.
Member for Ol Kalou Constituency

Jubilee Party

Hon. Johnson Many Naicca M.P.
West Constituency Member for Mumias

Orange Democratic Movement Party

Hon. Tom Mboya Odege M.P.
Member for Nyatike Constituency

Orange Democratic Movement Party

Hon. Suleiman D. Ramadhani M.P.
Member for Msambweni Constituency

Orange Democratic Movement Party

Hon. Ahmed Abdisalan Ibrahim M.P.
Member for Wajir North Constituency

Orange Democratic Movement Party

Hon. Gideon Mutemi Mulyungi M.P.
Member for Mwingi Central Constituency

Wiper Democratic Party

Hon. Vincent Kemosi Mogaka M.P.
Member for West Mugirango Constituency

Ford Kenya Party



1.3 Committee Secretariat

The Committee is resourced by the following members of the secretariat:-

Ms. Chelagat Tungo Aaron
First Clerk Assistant
Lead Clerk

Mr. Ahmed Salim Abdalla
Second Clerk Assistant

Mr. James Muguna
Research Officer III

Mr. Sydney Lugaga
Legal Counsel I

Mr. Collins Mahamba
Audio Recording Officer

Ms. Mercy Wanyonyi
Legal Counsel I

Ms. Noelle Chelangat
Media Relations Officer

Mr. Abdinasir Moge Yusuf
Fiscal Analyst

Ms. Zainabu Wario
Sergeant at Arms



2.0 CONSIDERATION OF THE KENYA ROADS BOARD (AMENDMENT) BILL, 2019

Clause 1 of the Bill provides for the short title.

Clause 2 of the Bill seeks to amend section 6 of the principal Act to exempt development budget and any funds raised through borrowing from the funds allocation formulation specified in the Act. The amendment further gives the Cabinet Secretary flexibility in funds allocation. The amendment seeks to ensure that reference in the section is made only to the fuel levy and not any other sources of monies for the Fund. This is in order to exempt the development budget and any other funds raised through borrowing from the funds allocation formula stipulated in the Act.

Clause 3 of the Bill seeks to amend section 19 of the principal Act to ensure that the Cabinet Secretary has control over works programmes and payments. The proposed amendment seeks to ensure that annual roads programme funded out of monies appropriated by Parliament or borrowed funds are managed under such terms as prescribed by the Board with the approval of the Cabinet Secretary.

Clause 4 of the Bill seeks to amend section 31(2) of the principal Act to enable the Kenya Roads Board to receive funds from the National treasury. The proposed amendment seeks to include monies appropriated by Parliament as one of the sources of funds of the Kenya Roads Board Fund hence enabling the Board to receive monies appropriated by Parliament.

Clause 5 of the Bill seeks to insert a new section 32A to enable the Kenya Roads Board to borrow and leverage on the Kenya Roads Fund. The proposed amendment seeks to empower the Kenya Roads Board, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance, to borrow and leverage on the Fund in order to meet financial demands for road development, rehabilitation and maintenance.



3.0 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL

Article 118 (1) (b) of the Constitution of Kenya provides as follows:

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”

Standing Order 127(3) provides as follows-

“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”

In line with the Constitution and Standing Orders, the National Assembly in the local daily newspapers of Wednesday 27th November, 2019 invited the public to make representations on the proposed amendments in the Bill as per annexure 2 of the report. Several members of the public either individually or representing institutions and organizations submitted their views to the Committee by way of written and oral submissions. By end of business Monday 2nd December, 2019 the Committee had not received any written submissions from the Public.

The Committee received both written and oral submissions on the proposed amendments to the Traffic Act, Cap 407 from the Ministry. The written submissions received are contained in Annexure 3 of the report.

3.1 Submission by Stakeholders

3.1.1 The Ministry of Transport, Infrastructure, Public Works, Housing and Urban Development

1. Introduction

1. The budgetary allocations from the National Treasury are not sufficient to complete the on-going road rehabilitation works and clear pending bills.
2. The National Trunk Roads need a total sum of Kshs. 667 Billion to complete the on-going road rehabilitation works and clear pending bills as at 31st October 2019.
3. In addition, the National Trunk roads need Kshs. 100 Billion annually for maintenance.
4. The current allocations to the road sector stand at Kshs. 60 Billion from the Fuel Levy and Kshs. 65 Billion from the National Treasury annually.
5. With these allocations the road sector needs approximately ten (10) years to complete the on-going works and maintenance of about fifty 50% of the road network annually as analysed below.

The situation is not tenable considering its huge negative impact on the country and the society at large.

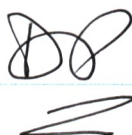


2. Recommendation

- i. KRB has successfully managed the Road Maintenance Levy Fund Over Twenty (20) years and is therefore well positioned to lead the issuance of a Road Bond
- ii. KRB recommends issuance of a Road Development Bond to complete on-going works in at least Three (3) years.
- iii. The Fuel levy will continue to be used for road maintenance to ensure accessibility and to protect the current investment
- iv. The annual National Treasury allocation of Kshs. 65 Billion to finance the Road Development Bond
- v. Kshs. 65 Billion annually could secure a financing of about Kshs. 360 Billion issued in tranches.
- vi. The Road Development Bond offers the National Government an off-balance sheet solution that will not have an impact on debt sustainability.
- vii. In 2016, KRB undertook preparatory works for market sounding for an infrastructure bond.
- viii. Draft Information memorandum received rating of AAA from Global Credit Rating (SA).

3. Requirements to Actualized Road Development Bond

- (a) The Cabinet Secretary submitted amendments to the KRB Act to do the following:
 - (i) Give KRB **powers to borrow**;
 - (ii) Enable KRB to receive all development funds for the road network for the National Government;
 - (iii) Exempt Development Fund and any Funds borrowed from the fuel levy from the allocation criteria stipulated in Section 6 of the KRB Act;
 - (iv) Give powers to the Cabinet Secretary to set aside a fund that will be leveraged to secure additional funds;
 - (v) Review the funds allocation criteria stipulated in Section 6 (2)(d) to provide for a maximum as opposed to the current minimum to give the Cabinet Secretary flexibility; and
 - (vi) Give KRB powers to manage works programmes and payments out of the funds raised through the bonds to give the investors' confidence.
- (b) Lock-in the current portfolio of road sector projects.
- (c) Empower KRB to prepare a programme of issuance of Bonds annually based on the expected Payment/cashflows.
- (d) Empower the National Treasury to assist KRB to structure the Bond and other instruments necessary to issue a successful Bond.



4. REQUEST

The Kenya Roads Board is adequately prepared to issue a Bond and has in the past engaged various banks leading to various financing options analysis studies. KRB therefore **requests approval to proceed with the above recommended solution** to enable it **to issue a Road Development Bond as soon as possible.**

Below are the proposed amendments to the KRB Act to facilitate the process.



PROPOSED AMENDMENTS

No.	Strategic Issues	Section	Proposed Amendments	Objects and Reasons
1	Powers to Borrow and set aside a fund to secure repayments	S. 32	<p><i>(1) The Board may with the approval of the Cabinet Secretary and the Cabinet Secretary for National Treasury borrow such monies as may be required by it for proper discharge of its functions under this Act.</i></p> <p><i>The Board may in consultation with the Cabinet Secretary and with the approval of the Cabinet Secretary for National Treasury, where it may be necessary to meet the financial demands for road development, rehabilitation and maintenance set aside a portion of the Fund for purposes of securing additional funding</i></p>	<p>The amendments gives express powers to Kenya Roads Board to borrow.</p> <p>It further gives the Board powers to leverage the Fund</p>
2	Development Budget	31(2)	<p>Add the following new subsection</p> <p><i>(a) "all monies allocated to the National Government from the Consolidated Fund for development, rehabilitation and maintenance of roads.</i></p>	<p>The amendments enables KRB to receive funds from the National Treasury</p>



No.	Strategic Issues	Section	Proposed Amendments	Objects and Reasons
3	Allocation of funds	Section 6(2)(d) Section 6(2)(d) (i), (iii) (iv), (v) 6 (2) (j)	Delete all the words from the words <i>.....Fund or any other source available to the Board</i>and replace therefore with <i>.....fuel levy</i> Delete the word <i>....Fund...</i> immediately after the words <i>.....</i> from the.... And replace therefore with the words... <i>fuel levy.....</i>	The amendment will exempt development budget and any funds raised through borrowing from the funds allocation formula stipulated in the Act
4	Allocation Flexibility	Section 6(2)(d)	Section 6(2)(d) is amended as follows;- <i>“ delete the word ...not less than ... immediately after the words and that ...and replace therefore with the wordsnot more than...”</i>	The amendment provides the Cabinet secretary flexibility in funds allocation.
5	Management of Works programmes on borrowed funds	Section 19	Insert the following new section after section 19(5) <i>(6)All road works programs funded out of any funds received from the national treasury and road development bond shall be managed under such terms and conditions as the Board with the approval of the Cabinet Secretary may direct.</i>	This is to ensure that the Cabinet Secretary has control over works programmes and payments. It will also give investors confidence

- **Note: KRB has powers to make rules. Rules for the management of Funds raised from the Bonds would then be developed and approved by The Cabinet Secretary**

4. CLAUSE BY CLAUSE CONSIDERATION OF THE BILL

This part deals with the clause by clause consideration of the Bill by the Committee after taking into consideration the views of the aforementioned stakeholders.

4.1 Clause 1

Clause 1 provides for the short title of the Bill.

4.1.1 Committee's Observation and Recommendation on Clause 1

The Committee observed that there was no stakeholder comments on the clause.

The Committee recommended that the clause be agreed to with the following amendment.

CLAUSE 1

THAT Clause 1 of the Bill be amended by inserting the words “and shall come into operation on the assent” immediately after the number “9”.

Justification

The effect of the amendment is that the Bill shall come into operation on the day of assent by the President. The justification is that immediate operation of the Act will empower the Kenya Roads Board to commence preparatory work for issuance of a Road Development Bond.

4.2 Clause 2

CLAUSE 2

“Section 6 of the Kenya Roads Board Act, (in this Act referred to as “the principal Act”), is amended in subsection (2) (d)—

- (a) in the prefatory statement by deleting the words “Fund or from any other source available to the Board” and substituting therefor the words “fuel levy”;
- (b) in subparagraph (i) by deleting the word “Fund” appearing immediately after the words “monies from the” and substituting therefor the words “fuel levy”;
- (c) in subparagraph (iii) by deleting the word “Fund” and substituting therefor the words “fuel levy”;
- (d) in subparagraph (iv) by deleting the word “Fund” and substituting therefor the words “fuel levy”; and
- (e) in subparagraph (v) by deleting the word “Fund” and substituting therefor the words “fuel levy”.”

Analysis

Clause 2 of the Bill seeks to amend section 6 of the principal Act to exempt development budget and any funds raised through borrowing from the funds allocation formulation specified in the Act. The amendment further gives the Cabinet Secretary flexibility in funds allocation. The amendment



seeks to ensure that reference in the section is made only to the fuel levy and not any other sources of monies for the Fund. This is in order to exempt the development budget and any other funds raised through borrowing from the funds allocation formula stipulated in the Act

4.2.1 Committee's Observation and Recommendation on Clause 2

4.3 Clause 3

CLAUSE 3

Section 19 of the principal Act is amended by inserting the following new subsection immediately after subsection (5)—

“(6) Every annual roads programme funded out of any monies appropriated by Parliament or borrowed funds, shall be managed under such terms and conditions as the Board, with the approval of the Cabinet Secretary, may direct.”

Analysis

Clause 3 of the Bill seeks to amend section 19 of the principal Act to ensure that the Cabinet Secretary has control over works programmes and payments. The proposed amendment seeks to ensure that annual roads programme funded out of monies appropriated by Parliament or borrowed funds are managed under such terms as prescribed by the Board with the approval of the Cabinet Secretary.

4.3.1 Committee's Observation and Recommendation on Clause 3

The Committee recommended that the clause be agreed to with the following amendment—

CLAUSE 3

Clause 3 of the Bill be amended in section 19 by deleting the proposed new subsection (6) and substituting the following new subsection—

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

(b) The Board shall manage the annual roads programme under paragraph (a) under the directions of the Cabinet Secretary.”

Justification

The amendment is a deletion and substitution whose effect is to ensure that the Kenya Roads Board obtains approval from the National Assembly to use any money appropriated or borrowed for implementation of the annual roads programme.



4.4 Clause 4

Section 31 of the principal Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (d)—

“(e) such monies as may be appropriated by Parliament for the development, maintenance and rehabilitation of roads.”

Analysis

Clause 4 of the Bill seeks to amend section 31(2) of the principal Act to enable the Kenya Roads Board to receive funds from the National treasury. The proposed amendment seeks to include monies appropriated by Parliament as one of the sources of funds of the Kenya Roads Board Fund hence enabling the Board to receive monies appropriated by Parliament.

4.4.1 Committee’s Observation and Recommendation on Clause 4

The Committee recommended that the clause be agreed to with the following amendment.

CLAUSE 4

THAT Clause 4 of the Bill be amended in section 31 by inserting the following new paragraph immediately after subsection (2)—

“(2A) The National Assembly shall ensure that –

- (a) not more than ten percent of the monies appropriated under subsection (2)(e) are allocated for maintenance of roads to be administered by the Kenya Rural Roads Authority.
- (b) not more than eighteen percent of the monies appropriated under paragraph (a) are allocated for research and standardization, capacity building, and monitoring and evaluation, to be administered by the Principal Secretary responsible for matters relating to roads.”

Justification

The amendment is a deletion and substitution. The effect of the amendment is to ensure that ten percent of the monies that are appropriated by the National Assembly are allocated for maintenance of roads to be administered by the Kenya Rural Roads Authority.

4.5 Clause 5

Clause 5 of the Bill seeks to insert a new section 32A to enable the Kenya Roads Board to borrow and leverage on the Kenya Roads Fund.

“(3) The Board may, with the approval of the Cabinet Secretary, make regulations for the better carrying out of its functions under this section.”



Analysis

Clause 5 of the Bill seeks to insert a new section 32A to enable the Kenya Roads Board to borrow and leverage on the Kenya Roads Fund. The proposed amendment seeks to empower the Kenya Roads Board, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance, to borrow and leverage on the Fund in order to meet financial demands for road development, rehabilitation and maintenance

4.5.1 Committee's Observation and Recommendation on Clause 5

The Committee recommended that the clause be agreed to with the following amendments—

CLAUSE 4

THAT Clause 5 of the Bill be amended in the proposed new section 32A—

- (a) in subclause (1), by inserting the expression “(1)” immediately after the expression 32A

Justification

The amendment is an insertion to ensure correct referencing of the proposed new subsection 32(1).

- (b) in subclause (2), by deleting the words “road development, rehabilitation and maintenance” and substituting therefor the words “maintenance, rehabilitation and development of roads” appearing immediately after the words “demand for”

Justification

The amendment is a deletion and substitution. The amendment enhances clarity to by using the correct sequencing of words used throughout the Kenya Roads Board Act.

- (c) by deleting subclause (3) and substituting therefor the following new sub clause—

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

Justification

The amendment is a deletion and substitution. The amendment empowers that the Cabinet Secretary makes regulations relating to borrowing under the proposed new section 32A and not the Board as was in the original Bill.



5.0 GENERAL OBSERVATIONS

The Committee made the following observations during the consideration of the Bill.

The Committee observed that:

1. The budgetary allocations from the National Treasury are not sufficient to complete the on-going road rehabilitation works and clear pending bills.
2. The Bill is necessary to enable the Kenya Roads Board to raise money to complete the stalled projects through the issuance of a Bond.
3. There was a need to amend Clause 1 of the Bill to provide for immediate operation of the Act will empower the Kenya Roads Board to commence preparatory work for issuance of a Road Development Bond.
4. There was a need to amend Clause 3 of the Bill to provide for oversight by the National Assembly of monies to be borrowed or appropriated for implementation of the annual roads programme.
5. There was a need to amend Clause 4 of the Bill is to ensure that ten percent of the monies that are appropriated by the National Assembly are allocated for maintenance of roads to be administered by the Kenya Rural Roads Authority to prevent crippling the operations of the Authority.
6. There was a need to amend Clause 5 of the Bill to empower that the Cabinet Secretary to makes regulations relating to borrowing under the proposed new section 32A.

6.0 COMMITTEE RECOMMENDATION

The Committee considered the Clauses of the Bill, Submissions from the public and stakeholders together with the relevant provisions of the Constitution, Standing Orders and resolved to pass the Bill with Amendments during Committee Stage.

The Committee, having considered the Bill clause by clause proposes that the Bill be passed subject to the inclusion of the proposed amendments

SIGNED  DATE 03/12/2019

HON. DAVID PKOSING, CBS, M.P
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON TRANSPORT PUBLIC WORKS AND HOUSING

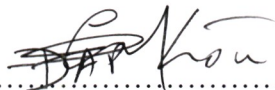

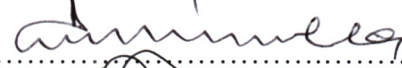
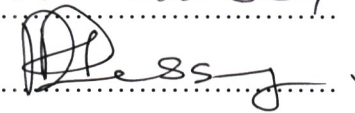
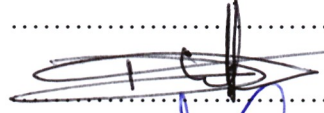

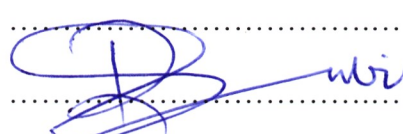
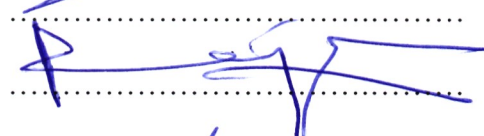
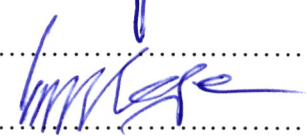
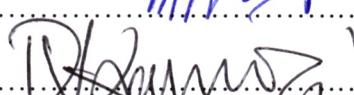
7.0 LIST OF ANNEXURES

- Annexure 1:** Minutes of Committee sittings on the consideration of the Bill
- Annexure 2:** Newspaper advertisement inviting the public to submit memoranda on the Bill
- Annexure 3:** Written submission received from stakeholders following newspaper advertisement



8.0 Adoption of the Report

We, the members of the Departmental Committee on Transport, Public Works and Housing have today 3rd December, 2019 adopted this Report on the Traffic (Amendment) Bill, 2019 (National Assembly Bill No. 28 of 2019), for consideration and approval by the House Pursuant to Standing Order 199.

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

ANNEXURE 1:
MINUTES OF COMMITTEE SITTINGS
ON THE CONSIDERATION OF THE
BILL

MINUTES OF THE EIGHTY FIRST (81ST) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON MONDAY, 2ND DECEMBER 2019 AT 9.30 AM. IN HILTON GARDEN INN HOTEL, NAIROBI

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Moses Kuria, M.P. - Vice Chairperson
3. Hon. Kulow Maalim Hassan, M.P.
4. Hon. Samuel Arama, M.P.
5. Hon. Peris Pesi Tobiko, M.P.
6. Hon. Dominic Kipkoech Koskei, M.P.
7. Hon. Vincent Kemosi Mogaka, M.P.
8. Hon. Gideon Mutemi Mulyungi, M.P.
9. Hon. Mugambi Murwithania Rindikiri, M.P.
10. Hon. Rigathi Gachagua, M.P.
11. Hon. Ahmed Bashane Gaal, M.P.
12. Hon. Johnson Many Naicca, M.P.
13. Hon. David Njuguna Kiharaho, MP.
14. Hon. Tom Mboya Odege, M.P.
15. Hon. Ahmed Abdisalan Ibrahim, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Suleiman Dori Ramadhani, M.P.
2. Hon. Rehema Dida Jaldesa, M.P.
3. Hon. Shadrack John Mose, M.P.
4. Hon. Savula Ayub Angatia, M.P.

SECRETARIAT

1. Ms. Chelagat Tungo Aaron - Clerk Assistant I
2. Ms. Sydney Lugaga - Legal Counsel
3. Mr. James Muguna - Research Officer
4. Moses Kariuki - Sergeant-at-arm
5. Collins Mahamba - Audio Officer
6. Mr. Ekusi Lore - Pupil
7. Ms. Viola Khalwali - Pupil

MIN No. TPWH 444/2019: PRELIMINARIES

The Chairman called the meeting to order at 10.00 am. The meeting was then opened with a word of prayer. Members were informed that the agenda of the meeting was to consider the Kenya Roads Board (Amendment) Bill, 2019; the County Roads, Walkways and Parking Bays Bill, 2018 (Senate Bill No. 18 of 2018) Traffic.

MIN No. TPWH 445/2019: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

The confirmation of minutes of the previous sitting was deferred to a later date.

MIN No. TPWH 446/2019: CONSIDERATION OF THE KENYA ROADS BOARD (AMENDMENT) BILL, 2019.

The Committee received and considered the amendments to the Kenya Roads Board Act, 1999.

The committee made the following observations on the Bill-

- That the Bill seeks to give power to the Kenya Roads Board to be able to borrow and service the borrowing.
- That the Bill seeks for the exchequer allocation to the Ministry of roads for Roads development to go directly to the Board and will not be subject to any subdivision.
- The only funds that will remain as subject of subdivision shall be the Fuel Levy.

The Committee resolved to engage the Ministry further on the amendments.

MIN No. TPWH 447/2019: CONSIDERATION OF THE REPORT ON PUBLIC PARTICIPATION ON THE COUNTY ROADS, WALKWAYS AND PARLING BAYS BILL (SENATE AMENDMENT BILL, NO. 18 OF 2018)

The Committee received and considered the report, *herein attached*.

The Committee made the following observations from the report-

- The Bill concerns County Governments in terms of Article 110(1) (a) of the Constitution as it contains provisions that affect the functions and powers of the County Governments with respect to county transport, county roads, parking, and public road transport as set out under paragraph 5 of part 2 of the Fourth Schedule to the Constitution. On the other hand, pursuant to paragraph 18 of part 1 of the Fourth Schedule to the Constitution, the National Government's powers and functions with regard to transport and communications include, among other things setting standards for the construction and maintenance of other roads by counties.

- There were already in place other laws/ Acts of Parliament that address all the issues captured in the Preamble such as the Physical Planning Act, Kenya Roads Act, 2007, the Traffic Act, the Public Roads and Roads of Access Act, the Street Adoption Act, the Persons with Disabilities Act and Urban Areas and Cities Act;
- The Bill has not stipulated the standards of construction and maintenance of county roads by counties which is a national government function in accordance with paragraph 18 of part 1 of the Fourth Schedule to the Constitution;
- In metropolitan areas, some county road network may serve as Rapid Transit Corridors.
- That certain clauses in the Bill were a duplication of existing laws like the Physical Planning Act.
- The Committee further noted that the existing laws simply need to be enforced;
- That if the Bill was enacted would significantly impact physical planning and development;

The Chairperson, indulged members to give their views on the Bill on the strength of the Report and the observations therein.

The committee resolved to unanimously reject the Bill.

The Committee resolved that a rejection report be prepared for tabling in Parliament on Wednesday 4th December, 2019.

MIN No. TPWH 448/2019: ADJOURNMENT

There being no other business to transact, the sitting adjourned 5 minutes past One o'clock.

Signed..... 

(Chairperson)

Date..... 03/12/2019.....

MINUTES OF THE EIGHTY SECOND (82ND) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON MONDAY, 3RD DECEMBER 2019 AT 9.30 AM. IN HILTON GARDEN INN HOTEL, NAIROBI

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. -Chairperson
2. Hon. Kulow Maalim Hassan, M.P.
3. Hon. Samuel Arama, M.P
4. Hon. Peris Pesi Tobiko, M.P.
5. Hon. Dominic Kipkoech Koskei, M.P.
6. Hon. Vincent Kemosi Mogaka, M.P.
7. Hon. Gideon Mutemi Mulyungi, M.P.
8. Hon. Mugambi Murwithania Rindikiri, M.P.
9. Hon. Rigathi Gachagua, M.P.
10. Hon. Ahmed Bashane Gaal, M.P.
11. Hon. Johnson Many Naicca, M.P.
12. Hon. Tom Mboya Odege, M.P.
13. Hon. David Njuguna Kiharaho, MP.
14. Hon. Ahmed Abdisalan Ibrahim, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Suleiman Dori Ramadhani, M.P.
3. Hon. Rehema Dida Jaldesa, M.P.
4. Hon. Shadrack John Mose, M.P.
5. Hon. Savula Ayub Angatia, M.P.

SECRETARIAT

1. Ms. Chelagat Tungo Aaron - Clerk Assistant I
2. Ms. Sydney Lugaga - Legal Counsel
3. Mr. James Muguna - Research Officer
4. Moses Kariuki - Sergeant-at-arm
5. Collins Mahamba - Audio Officer
6. Mr. Ekusi Lore - Pupil
7. Ms. Viola Khalwali - Pupil

IN ATTENDANCE

1. Eng. James Macharia- CS, MOTIHUD & PW.
2. Mr. Paul M. Muringa- Principal Secretary.

3. Eng. S. Kinoti- Ag. DG, KURA.
4. Eng. L. Kimfu- Ag. DG, KERRA.
5. Mr. Phillip Wachira- CEO, SDI.
6. Eng. Gilbert Arasa- D/CERS, SDI.
7. Ms. Lucy Gathika-GM, Legal Services...
8. Eng. Peter Mundiria- DG, KENHA.
9. Eng. James Kungu- Chief Engineer(Roads), Infrastructure.
10. Mr. B.J. Leparmarai- S. Admin Infrastructure.
11. Mr. M.O. Outu- Civil Engineer, Infrastructures.
12. Eng. S.W. Mwawasi-Deputy Director, PPP, KENHA.
13. Mrs Grace Kamau- Deputy Chief State Counsel, Infrastructure.
14. Mr Noah Odinga- Corporate Secretary, Legal affairs, KENHA
15. Eng. Margaret Ogai- General Manager, Planning, KRB.
16. Dr. Ronoh Tuimising- Legal Expert, PPP, Treasury.
17. Ms Joan Chesoni- Legal Officer, PPP, Treasury.
18. Gideon Magare- Legal Officer, PPP, Treasury.
19. Ms. Neala Wanjala- Legal Officer, PPP, Treasury.
20. Ms. Catherine Kassim-Deputy Manager, Legal Affairs, KRB.
21. Ms. Sweeney Kipruto-Clerical Officer, Legal Corporate Affairs, KRB.

MIN No. TPWH 449/2019: PRELIMINARIES

The Chairperson called the meeting to order at 9.30 am. The meeting was then opened with a word of prayer. Members and officials from the Ministry of Roads and Treasury were informed that the agenda of the meeting was to consider the Kenya Roads Board (Amendment) Bill, 2019.

MIN No. TPWH 450/2019: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

The confirmation of minutes of the previous sitting was deferred to a later date.

MIN No. TPWH 451/2019: SUBMISSIONS FROM THE STATE DEPARTMENT FOR TRANSPORT, INFRASTRUCTURE, HOUSING & DEVELOPMNET.

The Ministry made the following submission:

Introduction

- The budgetary allocations from the National Treasury are not sufficient to complete the on-going road rehabilitation works and clear pending bills.
 - The National Trunk Roads need a total sum of Kshs. 667 Billion to complete the on-going road rehabilitation works and clear pending bills as at 31st October 2019.

- In addition, the National Trunk roads need Kshs. 100 Billion annually for maintenance.
- The current allocations to the road sector stand at Kshs. 60 Billion from the Fuel Levy and Kshs. 65 Billion from the National Treasury annually.
- With these allocation the road sector needs approximately ten (10) years to complete the on-going works and maintenance of about fifty 50% of the road network annually as analysed below.

The situation is not tenable considering its huge negative impact on the country and the society at large.

Recommendation

- KRB has successfully managed the Road Maintenance Levy Fund over Twenty (20) years and is therefore well positioned to lead the issuance of a Road Bond
- KRB recommends issuance of a Road Development Bond to complete on-going works in at least Three (3) years.
- The Fuel levy will continue to be used for road maintenance to ensure accessibility and to protect the current investment
- The annual National Treasury allocation of Kshs. 65 Billion to finance the Road Development Bond
- Kshs. 65 Billion annually could secure a financing of about Kshs. 360 Billion issued in tranches.
- The Road Development Bond offers the National Government an off-balance sheet solution that will not have an impact on debt sustainability.
- In 2016, KRB undertook preparatory works for market sounding for an infrastructure bond.
- Draft Information memorandum received rating of AAA from Global Credit Rating (SA).

1. Requirements to Actualised Road Development Bond

- (a) The Cabinet Secretary submitted amendments to the KRB Act to do the following:
 - (i) Give KRB **powers to borrow**;

- (ii) Enable KRB to receive all development funds for the road network for the National Government;
 - (iii) Exempt Development Fund and any Funds borrowed from the fuel levy from the allocation criteria stipulated in Section 6 of the KRB Act;
 - (iv) Give powers to the Cabinet Secretary to set aside a fund that will be leveraged to secure additional funds;
 - (v) Review the funds allocation criteria stipulated in Section 6 (2)(d) to provide for a maximum as opposed to the current minimum to give the Cabinet Secretary flexibility; and
 - (vi) Give KRB powers to manage works programmes and payments out of the funds raised through the bonds to give the investors' confidence.
- (b) Lock-in the current portfolio of road sector projects.
- (c) Empower KRB to prepare a programme of issuance of Bonds annually based on the expected Payment/cashflows.
- (d) Empower the National Treasury to assist KRB to structure the Bond and other instruments necessary to issue a successful Bond.

2. REQUEST

The Kenya Roads Board is adequately prepared to issue a Bond and has in the past engaged various banks leading to various financing options analysis studies. KRB therefore **requests approval to proceed with the above recommended solution** to enable it **issue a Road Development Bond as soon as possible.**

Below are the proposed amendments to the KRB Act to facilitate the process.

PROPOSED AMENDMENTS

No.	Strategic Issues	Section	Proposed Amendments	Objects and Reasons
1	Powers to Borrow and set aside a fund to secure repayments	S. 32	<p><i>(1) The Board may with the approval of the Cabinet Secretary and the Cabinet Secretary for National Treasury borrow such monies as may be required by it for proper discharge of its functions under this Act.</i></p> <p><i>The Board may in consultation with the Cabinet Secretary and with the approval of the Cabinet Secretary for National Treasury, where it may be necessary to meet the financial demands for road development, rehabilitation and maintenance set aside a portion of the Fund for purposes of securing additional funding</i></p>	<p>The amendments gives express powers to Kenya Roads Board to borrow.</p> <p>It further gives the Board powers to leverage the Fund</p>
2	Development Budget	31(2)	<p>Add the following new subsection</p> <p><i>(a) "all monies allocated to the National Government from the Consolidated Fund for development, rehabilitation and maintenance of roads.</i></p>	<p>The amendments enables KRB to receive funds from the National Treasury</p>
3	Allocation of funds	Section 6(2)(d)	<p>Delete all the words from the words<i>Fund or any other source available to the Board</i>and replace therefore with<i>fuel levy</i></p>	<p>The amendment will exempt development budget and any funds raised through borrowing from the funds allocation formula stipulated in</p>


No.	Strategic Issues	Section	Proposed Amendments	Objects and Reasons
		Section 6(2)(d) (i), (iii) (iv), (v) 6 (2) (j)	Delete the word <i>Fund</i> ... immediately after the words from the.... And replace therefore with the words... <i>fuel levy</i>	the Act
4	Allocation Flexibility	Section 6(2)(d)	Section 6(2)(d) is amended as follows;- “ <i>delete the word ...not less than ... immediately after the words and that ...and replace therefore with the wordsnot more than...</i> ”	The amendment provides the Cabinet secretary flexibility in funds allocation.
5	Management of Works programmes on borrowed funds	Section 19	Insert the following new section after section 19(5) <i>(6)All road works programs funded out of any funds received from the national treasury and road development bond shall be managed under such terms and conditions as the Board with the approval of the Cabinet Secretary may direct.</i>	This is to ensure that the Cabinet Secretary has control over works programmes and payments. It will also give investors confidence

- **Note: KRB has powers to make rules. Rules for the management of Funds raised from the Bonds would then be developed and approved by The Cabinet Secretary**

MIN No. TPWH 452/2019:

ADJOURNMENT

There being no other business to transact, the sitting adjourned 23 minutes past Eleven o'clock.

Signed.....

(Chairperson)

Date.....03/12/2019.....

MINUTES OF THE EIGHTY THIRD (83RD) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON MONDAY, 3RD DECEMBER 2019 AT 12.00 PM. IN HILTON GARDEN INN HOTEL, NAIROBI

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. -Chairperson
2. Hon. Kulow Maalim Hassan, M.P.
3. Hon. Samuel Arama, M.P
4. Hon. Peris Pesi Tobiko, M.P.
5. Hon. Dominic Kipkoech Koskei, M.P.
6. Hon. Vincent Kemosi Mogaka, M.P.
7. Hon. Gideon Mutemi Mulyungi, M.P.
8. Hon. Mugambi Murwithania Rindikiri, M.P.
9. Hon. Rigathi Gachagua, M.P.
10. Hon. Ahmed Bashane Gaal, M.P.
11. Hon. Johnson Many Naicca, M.P.
12. Hon. David Njuguna Kiharaho, MP.
13. Hon. Tom Mboya Odege, M.P.
14. Hon. Ahmed Abdisalan Ibrahim, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Suleiman Dori Ramadhani, M.P.
3. Hon. Rehema Dida Jaldesa, M.P.
4. Hon. Shadrack John Mose, M.P.
5. Hon. Savula Ayub Angatia, M.P.

SECRETARIAT

1. Ms. Chelagat Tungo Aaron - Clerk Assistant I
2. Ms. Sydney Lugaga - Legal Counsel
3. Mr. James Muguna - Research Officer
4. Moses Kariuki - Sergeant-at-arm
5. Collins Mahamba - Audio Officer
6. Mr. Ekusi Lore - Pupil
7. Ms. Viola Khalwali - Pupil

IN ATTENDANCE

1. Mr. Paul M. Muringa- Principal Secretary.
2. Eng. S. Kinoti- Ag. DG, KURA.
3. Eng. L. Kimfu- Ag. DG, KERRA.
4. Mr. Phillip Wachira- CEO, SDI.
5. Eng. Gilbert Arasa- D/CERS, SDI.
6. Ms. Lucy Gathika-GM, Legal Services...
7. Eng. Peter Mundiria- DG, KENHA.
8. Eng. James Kungu- Chief Engineer (Roads), Infrastructure.
9. Mr. B.J. Leparmarai- S. Admin Infrastructure.
10. Mr. M.O. Outu- Civil Engineer, Infrastructures.
11. Eng. S.W. Mwawasi-Deputy Director, PPP, KENHA.
12. Mrs Grace Kamau- Deputy Chief State Counsel, Infrastructure.
13. Mr Noah Odinga- Corporate Secretary, Legal affairs, KENHA
14. Eng. Margaret Ogai- General Manager, Planning, KRB.
15. Dr. Ronoh Tuimising- Legal Expert, PPP, Treasury.
16. Ms Joan Chesoni- Legal Officer, PPP, Treasury.
17. Gideon Magare- Legal Officer, PPP, Treasury.
18. Ms. Neala Wanjala- Legal Officer, PPP, Treasury.
19. Ms. Catherine Kassim-Deputy Manager, Legal Affairs, KRB.
20. Ms. Sweeney Kipruto-Clerical Officer, Legal Corporate Affairs, KRB.

MIN No. TPWH 453/2019:

PRELIMINARIES

The Chairperson called the meeting to order at 12.30 pm. The meeting was then opened with a word of prayer. Members and officials from the Ministry of Roads and Treasury were informed that the agenda of the meeting was to consider amendments to the Kenya Roads Board (Amendment) Bill, 2019, as resolved in the earlier meeting.

MIN No. TPWH 454/2019:

CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

The confirmation of minutes of the previous sitting was deferred to a later date.

MIN No. TPWH 455/2019:

SUBMISSIONS FROM THE STATE DEPARTMENT FOR TRANSPORT, INFRASTRUCTURE, HOUSING & DEVELOPMNET.

The Committee made the following observations and proposals from the Ministry, relating to the Bill—

CLAUSE BY CLAUSE CONSIDERATION OF THE BILL

This part deals with the clause by clause consideration of the Bill by the Committee after taking into consideration the views of the aforementioned stakeholders.

Clause 1

Clause 1 provides for the short title of the Bill.

Committee's Observation and Recommendation on Clause 1

The Committee observed that there was no stakeholder comments on the clause.

The Committee recommended that the clause be agreed to with the following amendment.

CLAUSE 1

THAT Clause 1 of the Bill be amended by inserting the words “and shall come into operation on the assent” immediately after the number “9”.

Justification

The effect of the amendment is that the Bill shall come into operation on the day of assent by the President. The justification is that immediate operation of the Act will empower the Kenya Roads Board to commence preparatory work for issuance of a Road Development Bond.

Clause 2

CLAUSE 2

“Section 6 of the Kenya Roads Board Act, (in this Act referred to as “the principal Act”), is amended in subsection (2) (d)—

- (a) in the prefatory statement by deleting the words “Fund or from any other source available to the Board” and substituting therefor the words “fuel levy”;
- (b) in subparagraph (i) by deleting the word “Fund” appearing immediately after the words “monies from the” and substituting therefor the words “fuel levy”;

- (c) in subparagraph (iii) by deleting the word “Fund” and substituting therefor the words “fuel levy”;
- (d) in subparagraph (iv) by deleting the word “Fund” and substituting therefor the words “fuel levy”; and
- (e) in subparagraph (v) by deleting the word “Fund” and substituting therefor the words “fuel levy”.

Analysis

Clause 2 of the Bill seeks to amend section 6 of the principal Act to exempt development budget and any funds raised through borrowing from the funds allocation formulation specified in the Act. The amendment further gives the Cabinet Secretary flexibility in funds allocation. The amendment seeks to ensure that reference in the section is made only to the fuel levy and not any other sources of monies for the Fund. This is in order to exempt the development budget and any other funds raised through borrowing from the funds allocation formula stipulated in the Act

Committee’s Observation and Recommendation on Clause 2

Clause 3

CLAUSE 3

Section 19 of the principal Act is amended by inserting the following new subsection immediately after subsection (5)—

“(6) Every annual roads programme funded out of any monies appropriated by Parliament or borrowed funds, shall be managed under such terms and conditions as the Board, with the approval of the Cabinet Secretary, may direct.”

Analysis

Clause 3 of the Bill seeks to amend section 19 of the principal Act to ensure that the Cabinet Secretary has control over works programmes and payments. The proposed amendment seeks to ensure that annual roads programme funded out of monies appropriated by Parliament or borrowed funds are managed under such terms as prescribed by the Board with the approval of the Cabinet Secretary.

Committee's Observation and Recommendation on Clause 3

The Committee recommended that the clause be agreed to with the following amendment—

CLAUSE 3

Clause 3 of the Bill be amended in section 19 by deleting the proposed new subsection (6) and substituting the following new subsection—

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

(b) The Board shall manage the annual roads programme under paragraph (a) under the directions of the Cabinet Secretary.”

Justification

The amendment is a deletion and substitution whose effect is to ensure that the Kenya Roads Board obtains approval from the National Assembly to use any money appropriated or borrowed for implementation of the annual roads programme.

Clause 4

Section 31 of the principal Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (d)—

“(e) such monies as may be appropriated by Parliament for the development, maintenance and rehabilitation of roads.”

Analysis

Clause 4 of the Bill seeks to amend section 31(2) of the principal Act to enable the Kenya Roads Board to receive funds from the National treasury. The proposed amendment seeks to include monies appropriated by Parliament as one of the sources of funds of the Kenya Roads Board Fund hence enabling the Board to receive monies appropriated by Parliament.

Committee's Observation and Recommendation on Clause 4

The Committee recommended that the clause be agreed to with the following amendment.

CLAUSE 4

THAT Clause 4 of the Bill be amended in section 31 by inserting the following new paragraph immediately after subsection (2)–

“(2A) The National Assembly shall ensure that –

- (a) not more than ten percent of the monies appropriated under subsection (2)(e) are allocated for maintenance of roads to be administered by the Kenya Rural Roads Authority.
- (b) not more than eighteen percent of the monies appropriated under paragraph (a) are allocated for research and standardization, capacity building, and monitoring and evaluation, to be administered by the Principal Secretary responsible for matters relating to roads.”

Justification

The amendment is a deletion and substitution. The effect of the amendment is to ensure that ten percent of the monies that are appropriated by the National Assembly are allocated for maintenance of roads to be administered by the Kenya Rural Roads Authority.

Clause 5

Clause 5 of the Bill seeks to insert a new section 32A to enable the Kenya Roads Board to borrow and leverage on the Kenya Roads Fund.

“(3) The Board may, with the approval of the Cabinet Secretary, make regulations for the better carrying out of its functions under this section.”

Analysis

Clause 5 of the Bill seeks to insert a new section 32A to enable the Kenya Roads Board to borrow and leverage on the Kenya Roads Fund. The proposed amendment seeks to empower the Kenya Roads Board, with the approval of the Cabinet Secretary and the Cabinet Secretary

responsible for matters relating to finance, to borrow and leverage on the Fund in order to meet financial demands for road development, rehabilitation and maintenance

4.5.1 Committee's Observation and Recommendation on Clause 5

The Committee recommended that the clause be agreed to with the following amendments—

CLAUSE 4

THAT Clause 5 of the Bill be amended in the proposed new section 32A—

(a) in sub-clause (1), by inserting the expression “(1)” immediately after the expression 32A

Justification

The amendment is an insertion to ensure correct referencing of the proposed new subsection 32(1).

(b) in sub-clause (2), by deleting the words “road development, rehabilitation and maintenance” and substituting therefor the words “maintenance, rehabilitation and development of roads” appearing immediately after the words “demand for”

Justification

The amendment is a deletion and substitution. The amendment enhances clarity to by using the correct sequencing of words used throughout the Kenya Roads Board Act.

(c) by deleting sub-clause (3) and substituting therefor the following new sub clause—

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

Justification

The amendment is a deletion and substitution. The amendment empowers that the Cabinet Secretary makes regulations relating to borrowing under the proposed new section 32A and not the Board as was in the original Bill.

GENERAL OBSERVATIONS

The Committee made the following observations during the consideration of the Bill.

The Committee observed that:

1. The budgetary allocations from the National Treasury are not sufficient to complete the on-going road rehabilitation works and clear pending bills.
2. The Bill is necessary to enable the Kenya Roads Board to raise money to complete the stalled projects through the issuance of a Bond.
3. There was a need to amend Clause 1 of the Bill to provide for immediate operation of the Act will empower the Kenya Roads Board to commence preparatory work for issuance of a Road Development Bond.
4. There was a need to amend Clause 3 of the Bill to provide for oversight by the National Assembly of monies to be borrowed or appropriated for implementation of the annual roads programme.
5. There was a need to amend Clause 4 of the Bill to is to ensure that ten percent of the monies that are appropriated by the National Assembly are allocated for maintenance of roads to be administered by the Kenya Rural Roads Authority to prevent crippling the operations of the Authority.
6. There was a need to amend Clause 5 of the Bill to empower that the Cabinet Secretary to makes regulations relating to borrowing under the proposed new section 32A.

COMMITTEE RECOMMENDATION

The Committee, having considered the Bill clause by clause proposes that the Bill be passed subject to the inclusion of the proposed amendments

The Committee resolved to adjourn and reconvene at 5:30 pm to consider and validate the report of the committee for tabling before Parliament on Wednesday at 9:30 am.

MIN No. TPWH 456/2019:

ADJOURNMENT

There being no other business to transact, the sitting adjourned 24 minutes past Two o'clock.

Signed..... 

(Chairperson)

Date..... 03/12/2019,

MINUTES OF THE EIGHTY SECOND (84TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON MONDAY, 3RD DECEMBER 2019 AT 9.30 AM. IN HILTON GARDEN INN HOTEL, NAIROBI

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. -Chairperson
2. Hon. Kulow Maalim Hassan, M.P.
3. Hon. Samuel Arama, M.P
4. Hon. Peris Pesi Tobiko, M.P.
5. Hon. Dominic Kipkoech Koskei, M.P.
6. Hon. Rigathi Gachagua, M.P.
7. Hon. Vincent Kemosi Mogaka, M.P.
8. Hon. Gideon Mutemi Mulyungi, M.P.
9. Hon. Mugambi Murwithania Rindikiri, M.P.
10. Hon. David Njuguna Kiharaho, MP.
11. Hon. Johnson Many Naicca, M.P.
12. Hon. Ahmed Bashane Gaal, M.P.
13. Hon. Tom Mboya Odege, M.P.
14. Hon. Ahmed Abdisalan Ibrahim, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Suleiman Dori Ramadhani, M.P.
3. Hon. Rehema Dida Jaldesa, M.P.
4. Hon. Shadrack John Mose, M.P.
5. Hon. Savula Ayub Angatia, M.P.

SECRETARIAT

1. Ms. Chelagat Tungo Aaron - Clerk Assistant I
2. Ms. Sydney Lugaga - Legal Counsel
3. Mr. James Muguna - Research Officer
4. Moses Kariuki - Sergeant-at-arm
5. Collins Mahamba - Audio Officer
6. Mr. Ekusi Lore - Pupil
7. Ms. Viola Khalwali - Pupil

MIN No. TPWH 457/2019:

PRELIMINARIES

The Chairperson called the meeting to order at 12.30 pm. The meeting was then opened with a word of prayer. Members and officials from the Ministry of Roads and Treasury were informed that the agenda of the meeting was to consider amendments to the Kenya Roads Board (Amendment) Bill, 2019, as resolved in the earlier meeting.

MIN No. TPWH 458/2019:

**CONFIRMATION OF MINUTES OF
THE PREVIOUS MEETING**

1. The minutes of the 81st sitting held on 2nd December 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Peris Tobiko and Hon. David Kiaraho respectively.
2. The minutes of the 82nd sitting held on 3rd December 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Rigathi Gachagua and Hon. Tom Odege respectively.
3. The minutes of the 83rd sitting held on 3rd December 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Dominic Koskei and Hon. Samuel Arama respectively.

MIN No. TPWH 459/2019:

**CONSIDERATION OF THE REPORT
OF THE COMMITTEE ON THE
KENYA ROAD BOARD
(AMENDMENT) BILL, 2019**

The Committee received and considered its report, *herein attached*.

The committee resolved to adopt its report.

The Committee resolved to table the report before the house on Wednesday 4th December, 2019.

MIN No. TPWH 460/2019:

ADJOURNMENT

There being no other business to transact, the sitting adjourned 30 minutes past Six o'clock.

Signed.....

(Chairperson)

Date.....03/12/2019.....

ANNEXURE 2:
NEWSPAPER ADVERTISEMENT
INVITING THE PUBLIC TO SUBMIT
MEMORANDA ON THE BILL

NEWS GENERAL

AREA VERY COLD, CHILDREN FREEZING

Lonyangapuo appeals for warm clothes and blankets to help West Pokot landslide victims

MARRYANN CHAI/ West Pokot leaders have called for humanitarian aid to help those affected in the Friday night landslide that killed 53 people.

Most victims are living in IDP camps. Governor John Lonyangapuo on Tuesday said children were at serious risk of contracting diseases given their low immunity.

"We have found children coughing and shivering in most camps that we visited. This is because the affected regions are between 12,000 to 13,000 ft above sea level. The areas are very cold," Lonyangapuo said in Kapenguria.

"Let's support the affected families. We don't want to lose more lives."

He said he was happy no more deaths were reported on Tuesday and that food aid had reached victims because the weather was clear.

"We mostly need blanket and warm clothes to keep the children warm. The donations that we have received will reach the affected people today," he said.

Military trucks were helping in transporting food to victims.

World Vision donated 200 kits to

those affected. The NGO's national disaster management coordinator Felix Musonye said each kit contained a kitchen set, jericans, soap, mats, blankets and tents.

"The kits will help in offering shelter and has few kitchen utensils to be used by the affected families," Musonye said.

The Council of Governor led by Mander's Ali Roba and Marsabit's Muhamud Ali joined Lonyangapuo in visiting families. "The weather is clear today, we shall be able to visit various camps and assess the situation," Lonyangapuo said.

The governors also visited victims undergoing treatment at Kapenguria County Referral Hospital before heading to Mwino and Parua villages where the tragedy occurred.

"I am deeply saddened at the loss of lives and suffering that our brothers and sisters of West Pokot are experiencing. I offer my heartfelt condolences and those of the people of Mander's county and the entire Frontier Counties to the families and friends who have been killed," Roba said.



DP William Ruto talks with women at Nyarkuria centre where landslide victims are camping in West Pokot on Monday /DPPS

Roba gave Sh2.5 million saying it was a contribution from the Council of Governors. He said governors Anyang' Nyong'o (Kisumu), Mohamad Ali (Marsabit), Stanley Kiptis (Baringo) and Mohamed Abdi had contributed.

Head of the emergency depart-

ment at Moi Teaching and Referral Hospital Tabu Simiyu said all the injured victims were at Kapenguria County Referral Hospital.

"All patients that were in dispensaries have been brought to the hospital and I'm happy to report that they are fairing on well," Simiyu said.

REDUCED BY SH30 MILLION

Setback for Big Four agenda as MPs slash budget

MOSES ODHIAMBO/ President Uhuru Kenyatta's Big Four agenda yesterday suffered a big blow after MPs slashed Sh30 billion from the allocation for projects.

The lawmakers yesterday reduced the supplementary budget presented by acting Treasury CS Ukur Yatani.

The Budget and Appropriations Committee approved Sh50.6 billion from the initial Sh80 billion presented by Yatani.

Committee chairman Kimani' Ichung'wa (Kikuyu) asked the House to adopt the report which has also reduced recurrent expenditure by Sh800 million.

However, the 2019/20 budget still increased by Sh49.7 billion which the state will have to borrow to fund the deficit.

In the adjustments, several state ministries, departments and agencies (MDAs) will lose some of their initial proposals for additional funding.

The Interior Ministry is due to lose Sh1 billion reduced from National Integrated Identity Management System (Sh800 million) and the rest slashed from operational expenses.

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - THIRD SESSION

In the matter of consideration by the National Assembly:-
The Kenya Roads Board (Amendment) Bill (National Assembly Bill No. 77 of 2019)

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Further, the National Assembly Standing Order 127(3) requires the Departmental Committee to which a Bill is committed to facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House.

The Kenya Roads Board (Amendment) Bill (National Assembly Bill No. 77 of 2019) seeks to amend the Kenya Roads Board Act, 1999 in order to exempt development budget and any funds raised through borrowing from the funds allocation formulation specified in the Act. Further, the Bill seeks to empower the Kenya Roads Board to borrow and leverage on the Kenya Roads Fund.

The Kenya Roads Board (Amendment) Bill, (National Assembly Bill No. 77 of 2019) has undergone First Reading and pursuant to Standing Order 127(3) is now committed to the Departmental Committee on Transport, Public Works and Housing for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites members of the Public to submit any representations they may have on the said Bill. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Monday 2nd December, 2019 at 5:00 pm.

Copy of the Bill may be downloaded from the website of the Parliament of Kenya: <http://www.parliament.go.ke/the-national-assembly/house-business/bills>

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



PARLIAMENTARY SERVICE COMMISSION

INVITATION TO TENDER

TENDER NO. PSC/017/2019-2020

PROVISION OF GARBAGE COLLECTION SERVICES TO THE PARLIAMENT OF KENYA

The Parliamentary Service Commission invites sealed bids from eligible tenderers to tender for the provision of garbage collection services to the Parliament of Kenya.

Interested Bidders may obtain further information and inspect the Tender Document for free from the Procurement Office on 2nd Floor, Protection House. A complete set of the tender document may be downloaded free of charge from Commission's Website; www.parliament.go.ke or IFMIS Portal; www.supplier.treasury.go.ke.

There shall be a mandatory Pre-bid Meeting and a Site Survey thereafter on Wednesday, 4th December, 2019 from 11.00am at the Boardroom on 2nd Floor, Protection House, at the junction of Parliament Road and Haile Selassie Avenue, Nairobi.

Prices quoted should be net inclusive of all taxes and duties applicable, must be in Kenya Shillings and shall remain valid for 120 days from the closing date of the tender.

Duly completed tender documents are to be enclosed in plain sealed envelopes, marked with the tender number, name and as prescribed and be deposited in the tender box provided at the Reception on 2nd Floor, Protection House, at the junction of Parliament Road and Haile Selassie Avenue, Nairobi or be addressed to:-

Clerk of the Senate/Secretary,
Parliamentary Service Commission,
P. O. Box 41842-00100
NAIROBI

so as to be received on or before Friday, 13th December, 2019 at 11.00am.

Tenders must be accompanied by a tender Security of Kshs. 100,000.00 in form of a bank guarantee from a reputable bank or guarantee from an insurance company approved by the Public Procurement Regulatory Authority (PPRA) payable to Parliamentary Service Commission.

Tender documents will be opened immediately thereafter in the presence of the Candidates who choose to attend or their representatives, on 2nd Floor, Protection House at the junction of Parliament Road and Haile Selassie Avenue, Nairobi.

CLERK OF THE SENATE/SECRETARY,
PARLIAMENTARY SERVICE COMMISSION.



ANNEXURE 3:
WRITTEN SUBMISSION
RECEIVED FROM STAKEHOLDERS
FOLLOWING NEWSPAPER
ADVERTISEMENT

BRIEF ON PROPOSED AMENDMENTS TO THE KENYA ROADS BOARD ACT

1. Introduction

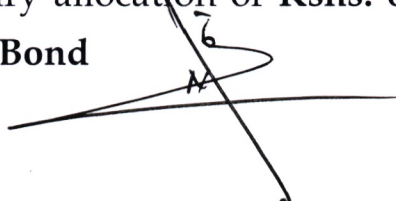
The budgetary allocations from the National Treasury are not sufficient to complete the on-going road rehabilitation works and clear pending bills.

- The National Trunk Roads **need a total sum of Kshs. 667 Billion** to complete the on-going road rehabilitation works and clear pending bills as at 31st October 2019
- In addition, the National Trunk roads need **Kshs. 100 Billion annually for maintenance.**
- The current allocations to the road sector stand at Kshs. 60 Billion from the Fuel Levy and Kshs. 65 Billion from the National Treasury annually.
- With these allocation the road sector needs approximately **Ten (10) years to complete the on-going works and maintenance** of about fifty 50% of the road network annually as analysed below;

The situation is not tenable considering its huge negative impact on the country and the society at large.

2. Recommendation

- KRB has **successfully managed the Road Maintenance Levy Fund** over Twenty (20) years and is therefore well positioned to lead the issuance of a Road Bond
- KRB recommends issuance of a **ROAD DEVELOPMENT BOND** to complete on-going works in at least **Three (3) years**
- **Fuel levy will continue to be used for road maintenance** to ensure accessibility and to protect the current investment
- Annual National Treasury allocation of **Kshs. 65 Billion to finance the Road Development Bond**



- Kshs. 65 Billion annually could **secure a financing of about Kshs. 360 Billion** issued in tranches.
- **ROAD DEVELOPMENT BOND** offers the National Government an **off-balance sheet solution** that will **not have an impact on debt sustainability**.
- In 2016, KRB undertook **preparatory works** for market sounding for an infrastructure bond.
- Draft Information memorandum received **rating of AAA** from Global Credit Rating (SA).

3. Requirements to Actualised Road Development Bond

(a) Amendment of KRB Act to do the following;-

- (i) Give KRB **powers to borrow**;
- (ii) Enable KRB to receive all development funds for the road network for the National Government;
- (iii) Exempt Development Fund and any Funds borrowed from the fuel levy from the allocation criteria stipulated in Section 6 of the KRB Act;
- (iv) Give powers to the Cabinet Secretary to set aside a fund that will be leveraged to secure additional funds;
- (v) Review the funds allocation criteria stipulated in Section 6 (2)(d) to provide for a maximum as opposed to the current minimum to give the Cabinet Secretary flexibility; and
- (vi) Give KRB powers to manage works programmes and payments out of the funds raised through the bonds to give the investors' confidence.

(b) Lock-in the current portfolio of road sector projects.

(c) KRB to prepare a programme of issuance of Bonds annually based on the expected Payment/cashflows.

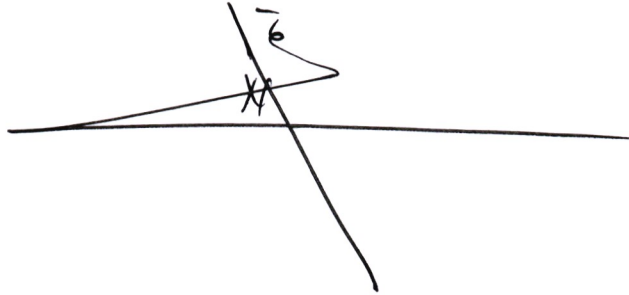


(d) National Treasury to assist KRB to structure the Bond and other instruments necessary to issue a successful Bond.

4. REQUEST


KRB is adequately prepared to issue a Bond and has in the past engaged various banks leading to various financing options analysis studies. KRB therefore **requests approval to proceed with the above recommended solution** to enable it **issue a Road Development Bond as soon as possible.**

Below are the proposed amendments to the KRB Act to facilitate the process.



PROPOSED AMENDMENTS

No.	Strategic Issues	Section	Proposed Amendments	Objects and Reasons
1	Powers to Borrow and set aside a fund to secure repayments	S. 32	<p><i>(1) The Board may with the approval of the Cabinet Secretary and the Cabinet Secretary for National Treasury borrow such monies as may be required by it for proper discharge of its functions under this Act.</i></p> <p><i>The Board may in consultation with the Cabinet Secretary and with the approval of the Cabinet Secretary for National Treasury, where it may be necessary to meet the financial demands for road development, rehabilitation and maintenance set aside a portion of the Fund for purposes of securing additional funding</i></p>	<p>The amendments gives express powers to Kenya Roads Board to borrow.</p> <p>It further gives the Board powers to leverage the Fund</p>
2	Development Budget	31(2)	<p>Add the following new subsection</p> <p><i>(a) "all monies</i></p>	<p>The amendments enables KRB to receive funds from the</p>



No.	Strategic Issues	Section	Proposed Amendments	Objects and Reasons
			<i>allocated to the National Government from the Consolidated Fund for development, rehabilitation and maintenance of roads.</i>	National Treasury
3	Allocation of funds	Section 6(2)(d) Section 6(2)(d) (i), (iii) (iv), (v) 6 (2) (j)	Delete all the words from the words <i>....Fund or any other source available to the Board ...</i> and replace therefore with <i>....fuel levy</i> Delete the word <i>....Fund...</i> immediately after the words <i>....</i> from the.... And replace therefore with the words... <i>fuel levy</i>	The amendment will exempt development budget and any funds raised through borrowing from the funds allocation formula stipulated in the Act
4	Allocation Flexibility	Section 6(2)(d)	Section 6(2)(d) is amended as follows;- <i>" delete the word ...not less than ... immediately after the words and that ... and replace therefore with the wordsnot more than..."</i>	The amendment provides the Cabinet secretary flexibility in funds allocation.
5	Management of Works	Section	Insert the following new section after	This is to ensure that the Cabinet

No.	Strategic Issues	Section	Proposed Amendments	Objects and Reasons
	programmes on borrowed funds	19	<p>section 19(5)</p> <p><i>(6) All road works programs funded out of any funds received from the national treasury and road development bond shall be managed under such terms and conditions as the Board with the approval of the Cabinet Secretary may direct.</i></p>	Secretary has control over works programmes and payments. It will also give investors confidence

- *Note: KRB has powers to make rules. Rules for the management of Funds raised from the Bonds would then be developed and approved by The Cabinet Secretary*

*Prof. Arch. Paul Mwangi Maringa (PhD), CBS
 PRINCIPAL SECRETARY,
 STATE DEPARTMENT OF INFRASTRUCTURE*

JN CS - MOTIHUO.

S/No.	Section in Kenya Roads Board Act	Provision in the Bill	Amendment
1.	6 (2)(d)	<p>6. (1) The object and purpose for which the Board is established is to oversee the road network in Kenya and coordinate the maintenance, rehabilitation and development funded by the Fund and to advise the Minister on all matters related thereto.</p> <p>(2) Without prejudice to the generality of subsection (1), the Board shall—</p> <p>(a) co-ordinate the optimal utilisation of the Fund in implementation of programmes relating to the maintenance, rehabilitation and development of the road network;</p> <p>(b) seek to achieve optimal efficiency and cost effectiveness in road works funded by the Fund;</p> <p>(c) manage the Fund;</p> <p>(d) based on a five year road investment programme approved by the Minister and the Minister for Finance, determine the allocation of financial resources from the Fund or from any other source available to the Board required by road agencies for the maintenance, rehabilitation and development of the road network to ensure that the allocation of funds is pegged to specific categories of roads and that not less than—</p> <p>(i) twenty-two percent, which shall be deposited into a special bank account to be called Constituency Roads Fund Account to be maintained by every Constituency of the monies from the Fund is allocated equally to all constituencies in the country to be administered by the Rural Roads Authority;</p> <p>(ii) ten percent of the monies from the Fund is allocated for the maintenance or development of link roads between constituencies and to serve as Government counterpart funds in funding works on rural roads, to be administered by the Kenya rural Roads Authority and that the said percentage shall be equally distributed to the Constituencies where Kenya Rural Roads Authority has the mandate;</p> <p>(iii) forty percent of the monies from the Fund is allocated in</p>	<p>Section 6 of the Kenya Roads Board Act, (in this Act referred to as “the principal Act”), is amended in subsection (2) (d)—</p> <p>(a) in the prefatory statement by deleting the words “Fund or from any other source available to the Board” and substituting therefor the words “fuel levy”;</p> <p>(b) in subparagraph (i) by deleting the word “Fund” appearing immediately after the words “monies from the” and substituting therefor the words “fuel levy”;</p> <p>(c) in subparagraph (iii) by deleting the word “Fund” and substituting therefor the words “fuel levy”;</p> <p>(d) in subparagraph (iv) by deleting the word “Fund” and substituting therefor the words “fuel levy”;</p> <p>(e) in subparagraph (v) by deleting the word “Fund” and substituting therefor the words “fuel levy”.</p>

		<p>respect of the national roads to be administered by the National Highways Authority;</p> <p>(iv) fifteen percent of the monies from the Fund is allocated in respect of the urban roads to be administered by the Urban Roads Authority; and</p> <p>(v) one percent of the monies from the Fund is allocated in respect of roads in national parks and reserves to be administered by the Kenya Wildlife Service, and</p> <p>(vi) a maximum of two percent of the monies from the Fund is allocated in respect of the recurrent expenditure of the Board under section 31(5);</p>	
2.	19	<p>19. (1) The Board shall indicate to the road agencies at least a year in advance—</p> <p>(a) the amount of money likely to be available to the Board for allocation in the coming year;</p> <p>(b) the priorities of the Board in funds allocation in the coming year; and</p> <p>(c) the criteria to be applied in making allocations.</p> <p>(2) Every road agency shall, at least six months before the commencement of every financial year, submit to the Board an annual roads programme in such form and containing such details as the Board shall specify, outlining a comprehensive plan of action for the development rehabilitation and maintenance of roads under the charge of the roads agency and the estimated costs of every activity required to implement the plan of action.</p> <p>(3) The road agency shall select the roads to be included in its programme.</p> <p>(4) The Board shall review, individually, the annual roads programmes submitted to it by the road agencies and shall consolidate the annual roads programme into annual public roads programme which shall—</p> <p>(a) specify the amounts allocated for the maintenance, rehabilitation and development of each class of roads;</p> <p>(b) match the cost of implementing the annual roads programme</p>	<p>Section 19 of the principal Act is amended by inserting the following new subsection immediately after subsection (5)—</p> <p>(6) Every annual roads programme funded out of any monies appropriated by Parliament or borrowed funds, shall be managed under such terms and conditions as the Board, with the approval of the Cabinet Secretary, may direct,</p>

	3.	<p>with revenues collected or estimated to be collected by and within the Fund; and</p> <p>(c) identify roads requiring maintenance, rehabilitation or development in order of priority, taking into account social and economic requirements of the country or any part thereof in which roads are located.</p> <p>(5) The Board shall submit to the Minister and the Minister for Finance the annual roads programme for approval and the approved programme shall form the basis of funds allocation and auditing of works by the Board and shall not be varied by the road agency without the prior written approval of the Board.</p> <p>31. (1) There is established a Fund to be known as the Kenya Roads Board Fund which shall vest in the Board.</p> <p>(2) There shall be paid into the Fund—</p> <p>(a) all proceeds from the Road Maintenance Levy Fund;</p> <p>(b) such moneys or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law;</p> <p>(c) such sums as may be payable to the Board pursuant to this Act or any other written law, or pursuant to any gift or trust;</p> <p>(d) all moneys from any other source provided for or donated or lent to the Board.</p> <p>(3) All receipts, savings and accruals for the Fund and the balance of the Fund at the end of the financial year shall be retained for the purposes for which the Fund is established.</p> <p>(4) There shall be paid out of the Fund any expenditure incurred by the Board in the exercise of its powers or the performance of its functions under this Act.</p> <p>(5) The Board shall with the approval of the Minister, set a ceiling of the money which in any one year may be spent on recurrent expenditure which shall not exceed 3% of the total collections in that year.</p>	
4.	New		<p>Section 31 of the principal Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (d)—</p> <p>(e) such monies as may be appropriated by Parliament for the development, maintenance and Rehabilitation of roads.</p>
			<p>The principal Act is amended by inserting the following new section immediately after section 32—</p>

			<p>32A. The Board may, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance, borrow such monies as may be required for the proper discharge of its functions under this Act.</p> <p>(2) The Board may, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance, where it is necessary to meet financial demands for road development, rehabilitation and maintenance, set aside a portion of the Fund for purposes of securing additional funding.</p> <p>(3) The Board may, with the approval of the Cabinet Secretary, make regulations for the better carrying out of its functions under this section.</p>
5.	New		<p>That the principal Act be amended by inserting the following new sections-</p> <p>32B. A minimum 10% of the net government of Kenya development exchequer provision allocated to roads development as appropriated by parliament for the State department responsible for roads, be retained by the State department responsible for roads, for emergency mitigation of national roads, and disbursed with the approval of the accounting officer.</p>
6.	New		<p>32C. Development funds set aside for other non-road development activities within the State department responsible for roads shall not be paid into the fund.</p>

KENYA ROADS BOARD (AMENDMENT) BILL, 2019

BRIEF ON THE KENYA ROADS BOARD (AMENDMENT) BILL, 2019

ACT	PROVISION IN THE ACT	PROPOSED AMENDMENT	COMMENTS	COMMITTEE RESOLUTION
<p>The Kenya Roads Board Act, 2009</p>	<p>6. Object and purpose of the Board</p> <p>(1) The object and purpose for which the Board is established is to oversee the road network in Kenya and coordinate the maintenance, rehabilitation and development funded by the Fund and to advise the Minister on all matters related thereto.</p> <p>(2) Without prejudice to the generality of subsection (1), the Board shall—</p> <ul style="list-style-type: none"> . (a) co-ordinate the optimal utilisation of the Fund in implementation of programmes relating to the maintenance, rehabilitation and development of the road network; . (b) seek to achieve optimal efficiency and cost effectiveness in roadworks funded by the Fund; . (c) manage the Fund; . (d) based on a five year road investment programme approved by the Minister and the Minister for Finance, determine the allocation of financial resources 	<p>CLAUSE 2</p> <p>Section 6 of the Kenya Roads Board Act, (in this Act referred to as “the principal Act”), is amended in subsection (2) (d)—</p> <p>(a) in the prefatory statement by deleting the words “Fund or from any other source available to the Board” and substituting therefor the words “fuel levy”;</p> <p>(b) in subparagraph (i) by deleting the word “Fund” appearing immediately after the words “monies from the” and substituting therefor the words “fuel levy”;</p> <p>(c) in subparagraph (iii) by deleting the word “Fund” and substituting therefor the</p>	<p>The amendment seeks to ensure that reference in the section is made only to the fuel levy and not any other sources of monies for the Fund.</p> <p>This is in order to exempt the development budget and any other funds raised through borrowing from the funds allocation formula stipulated in the Act.</p>	

<p>available to the Board required by road agencies for the maintenance, rehabilitation and development of the road network to ensure that the allocation of funds is pegged to specific categories of roads and that not less than—</p> <ul style="list-style-type: none"> (i) twenty-two percent, which shall be deposited into a special bank account to be called Constituency Roads Fund Account to be maintained by every Constituency of the monies from the Fund is allocated equally to all constituencies in the country to be administered by the Rural Roads Authority; (ii) ten percent of the monies from the Fund is allocated for the maintenance or development of link roads between constituencies and to serve as Government counterpart funds in funding works on rural roads, to be administered by the Kenya rural Roads Authority and that the said percentage shall be equally distributed to the Constituencies where Kenya Rural Roads Authority has the mandate; (iii) forty percent of the monies from the Fund is allocated in respect of the national roads to be administered by the 	<ul style="list-style-type: none"> (d) in subparagraph (iv) by deleting the word “Fund” and substituting therefor the words “fuel levy”; and (e) in subparagraph (v) by deleting the word “Fund” and substituting therefor the words “fuel levy”. 	
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- . (iv) fifteen percent of the monies from the Fund is allocated in respect of the urban roads to be administered by the Urban Roads Authority; and
- . (v) one percent of the monies from the Fund is allocated in respect of roads in national parks and reserves to be administered by the Kenya Wildlife Service, and
- . (vi) a maximum of two percent of the monies from the Fund is allocated in respect of the recurrent expenditure of the Board under section 31(5);
- (e) ensure that the remainder of the monies from the Fund described in paragraph (d) shall be allocated annually by the Board with the approval of the Minister to road authorities based on an annual work programme derived from the five-year road investment programme approved by the Minister responsible for roads and the Minister for Finance;
- (f) ensure that a maximum of ten percent of all monies allocated to each road agency is utilized for development purposes by said agency;
- (g) monitor and evaluate, by means of technical, financial and performance audits, the

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by the Fund;

(h) in implementing paragraph (g), pay due regard to public procurement and disposal regulations and additional guidelines issued or approved by the Minister;

(i) recommend to the Minister appropriate levels of road user charges, fines, penalties, levies or any sums required to be collected under the Road Maintenance Levy Fund Act, 1993 and paid into the Fund;

(j) recommend to the Minister such periodic reviews of the fuel levy as are necessary for the purposes of the Fund; and

(k) identify, quantify and recommend to the Minister such other potential sources of revenue as may be available to the Fund for the development, rehabilitation and maintenance of roads;

(l) the Highways Authority, the rural Roads Authority and the Urban Roads Authority may utilize such portion of monies received from the Fund for operational and administrative expenses as may be approved by the Minister on the advice of the Board:

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

the Hon'ble Minister for
 four percent;

(ii) in the case of the Rural Roads Authority, five and half percent; and

(iii) in the case of the Urban Roads Authority, five and a half percent.

19. Annual Roads Programmes

- (1) The Board shall indicate to the road agencies at least a year in advance—
- (a) the amount of money likely to be available to the Board for allocation in the coming year;
 - (b) the priorities of the Board in funds allocation in the coming year; and
 - (c) the criteria to be applied in making allocations.

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

CLAUSE 3

Section 19 of the principal Act is amended by inserting the following new subsection immediately after subsection (5)—

- (6) Every annual roads programme funded out of any monies appropriated by Parliament or borrowed funds, shall be managed under such terms and conditions as the Board, with the approval of the Cabinet Secretary, may direct.

The proposed amendment seeks to ensure that annual roads programme funded out of monies appropriated by Parliament or borrowed funds are managed under such terms as prescribed by the Board with the approval of the Cabinet Secretary.

<p>(3) The road agency shall select the roads to be included in its programme.</p> <p>(4) The Board shall review, individually, the annual roads programmes submitted to it by the road agencies and shall consolidate the annual roads programme into annual public roads programme which shall—</p> <ul style="list-style-type: none">. (a) specify the amounts allocated for the maintenance, rehabilitation and development of each class of roads;. (b) match the cost of implementing the annual roads programme with revenues collected or estimated to be collected by and within the Fund; and. (c) identify roads requiring maintenance, rehabilitation or development in order of priority, taking into account social and economic requirements of the country or any part thereof in which roads are located. <p>(5) The Board shall submit to the Minister and the Minister for Finance the annual roads programme for approval and the approved programme shall form the basis of funds allocation and auditing of works by the Board and shall not be varied by the road agency without the prior written approval of the Board.</p>	<p>CLAUSE 4</p>	
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31. The Kenya Roads Board Fund

- (1) There is established a Fund to be known as the Kenya Roads Board Fund which shall vest in the Board.
- (2) There shall be paid into the Fund—
 - (a) all proceeds from the Road Maintenance Levy Fund;
 - (b) such moneys or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law;
 - (c) such sums as may be payable to the Board pursuant to this Act or any other written law, or pursuant to any gift or trust;
 - (d) all moneys from any other source provided for or donated or lent to the Board.
- (3) All receipts, savings and accruals for the Fund and the balance of the Fund at the end of the financial year shall be retained for the purposes for which the Fund is established.
- (4) There shall be paid out of the Fund any expenditure incurred by the Board in the

amended in subsection (2) by inserting the following new paragraph immediately after paragraph (d)—


(e) such monies as may be appropriated by Parliament for the development, maintenance and rehabilitation of roads.

The proposed amendment seeks to include monies appropriated by Parliament as one of the sources of funds of the Kenya Roads Board Fund hence enabling the Board to receive monies appropriated by Parliament.

	<p>functions under this Act.</p> <p>(5) The Board shall with the approval of the Minister, set a ceiling of the money which in any one year may be spent on recurrent expenditure which shall not exceed 3% of the total collections in that year.</p>	<p>CLAUSE 5</p> <p>The principal Act is amended by inserting the following new section immediately after section 32—</p> <p>32A. The Board may, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance, borrow such monies as may be required for the proper discharge of its functions under this Act.</p> <p>(2) The Board may, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance, where it is necessary to meet financial demands for road development, rehabilitation and maintenance, set aside a portion of</p>	<p>The proposed amendment seeks to empower the Kenya Roads Board, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance, to borrow and leverage on the Fund in order to meet financial demands for road development, rehabilitation and maintenance</p>
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additional funding.

(3) The Board may, with the approval of the Cabinet Secretary, make regulations for the better carrying out of its functions under this section.



SPECIAL ISSUE

Kenya Gazette Supplement No. 184 (National Assembly Bills No. 77)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2019

NAIROBI, 18th November, 2019

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**THE KENYA ROADS BOARD (AMENDMENT)
BILL, 2019**

A Bill for

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

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Kenya Roads Board (Amendment) Act, 2019.

Short title.

2. Section 6 of the Kenya Roads Board Act, (in this Act referred to as “the principal Act”), is amended in subsection (2) (d)—

Amendment of section 6 of No. 7 of 1999.

(a) in the prefatory statement by deleting the words “Fund or from any other source available to the Board” and substituting therefor the words “fuel levy”;

(b) in subparagraph (i) by deleting the word “Fund” appearing immediately after the words “monies from the” and substituting therefor the words “fuel levy”;

(c) in subparagraph (iii) by deleting the word “Fund” and substituting therefor the words “fuel levy”;

(d) in subparagraph (iv) by deleting the word “Fund” and substituting therefor the words “fuel levy”;
and

(e) in subparagraph (v) by deleting the word “Fund” and substituting therefor the words “fuel levy”.

3. Section 19 of the principal Act is amended by inserting the following new subsection immediately after subsection (5)—

Amendment of section 19 of No. 7 of 1999.

(6) Every annual roads programme funded out of any monies appropriated by Parliament or borrowed funds, shall be managed under such terms and conditions as the Board, with the approval of the Cabinet Secretary, may direct.

4. Section 31 of the principal Act is amended in subsection (2) by inserting the following new paragraph

Amendment of section 31 of No. 7 of 1999.

- (e) such monies as may be appropriated by Parliament for the development, maintenance and rehabilitation of roads.

5. The principal Act is amended by inserting the following new section immediately after section 32—

Insertion of new section into No. 7 of 1999.

Power to borrow and set aside funds to secure repayments.

32A. The Board may, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance, borrow such monies as may be required for the proper discharge of its functions under this Act.

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

(3) The Board may, with the approval of the Cabinet Secretary, make regulations for the better carrying out of its functions under this section.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Kenya Roads Act, 1999. The Bill seeks to exempt development budget and any funds raised through borrowing from the funds allocation formulation specified in the Act. The amendments further give the Kenya Roads Board power to borrow and leverage on the Kenya Roads Fund.

Clause 1 of the Bill provides for the short title.

Clause 2 of the Bill seeks to amend section 6 of the principal Act to exempt development budget and any funds raised through borrowing from the funds allocation formulation specified in the Act. The amendment further gives the Cabinet Secretary flexibility in funds allocation.

Clause 3 of the Bill seeks to amend section 19 of the principal Act to ensure that the Cabinet Secretary has control over works programmes and payments.

Clause 4 of the Bill seeks to amend section 31(2) of the principal Act to enable the Kenya Roads Board to receive funds from the National treasury.

Clause 5 of the Bill seeks to insert a new section 32A to enable the Kenya Roads Board to borrow and leverage on the Kenya Roads Fund.

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

The Bill does not contain any provisions limiting any fundamental rights or freedom.

Statement on how the Bill concerns county governments

The Bill does not affect the functions of County governments as set out in the Fourth Schedule to the Constitution and is therefore not a Bill concerning counties. Section 18 of Part 1 of the Fourth schedule to Constitution provides that transport and communication is a national government function.

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

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 14th November, 2019.

ADEN DUALE,
Leader of Majority Party.

Section 6 of the Kenya Roads Board Act, 1999 which it is proposed to amend—

Object and purpose of the Board

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

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

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

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

Provided that such expenditure shall not in any year exceed, as a

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

Section 19 of the Kenya Roads Board Act, 1999 which it is proposed to amend—

Annual Roads Programmes

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

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

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

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

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

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

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

Section 31 of the Kenya Roads Board Act, 1999 which it is proposed to amend—

The Kenya Roads Board Fund

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

(2) There shall be paid into the Fund—

- (a) all proceeds from the Road Maintenance Levy Fund;
- (b) such moneys or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law;
- (c) such sums as may be payable to the Board pursuant to this Act or any other written law, or pursuant to any gift or trust;
- (d) all moneys from any other source provided for or donated or lent to the Board.

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

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

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