

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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**NATIONAL ASSEMBLY BILLS, 2019**

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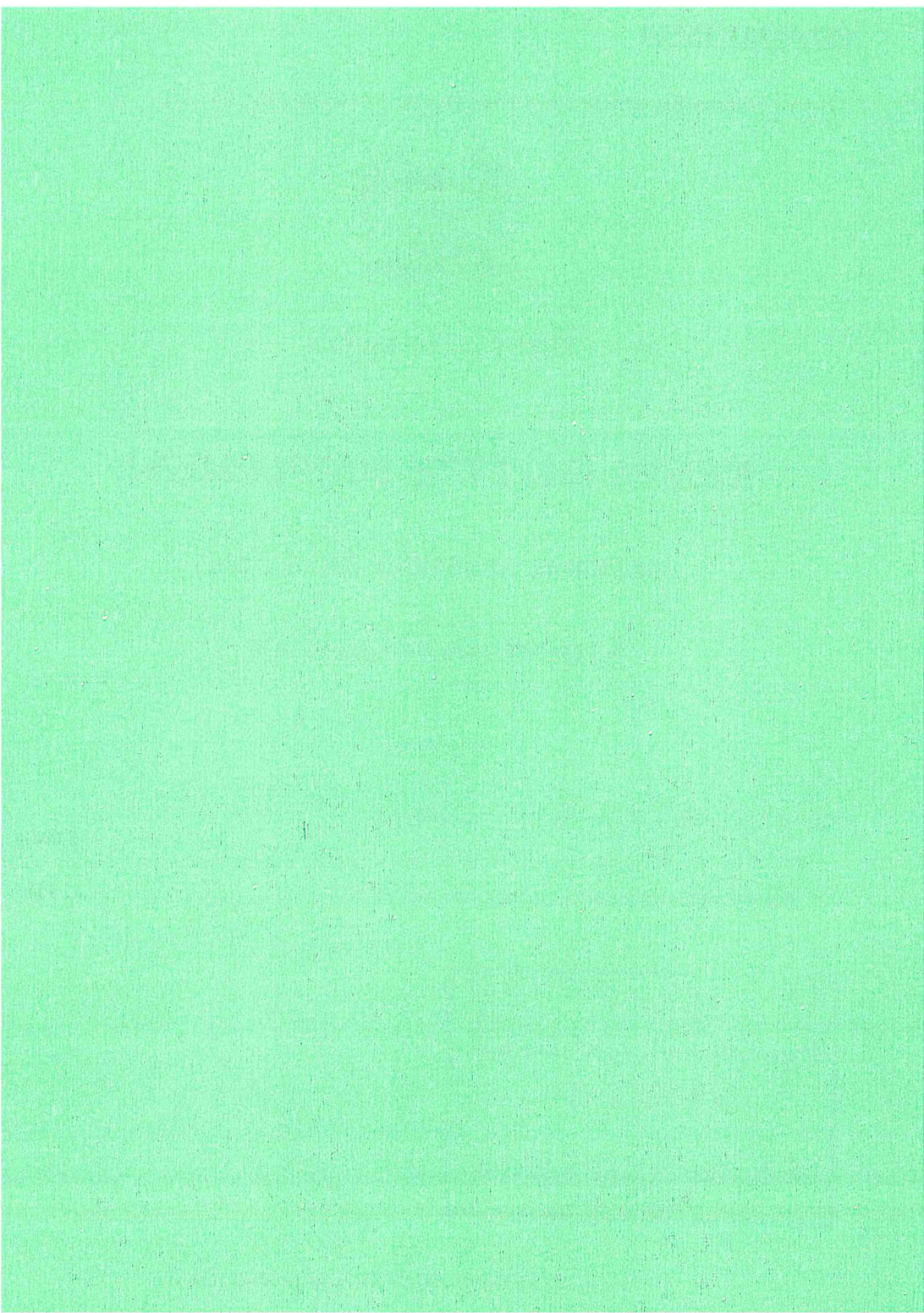
Bill for Introduction into the National Assembly—

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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 immediately after paragraph (d)—

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 proportion of the projected annual expenditure of the Fund—



- (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.



