



ICPAK SUBMISSION ON THE ROADS BILL 2017

FEBRUARY 2018

Background Information

The Roads Bill is an Act of Parliament to provide for the classification, management construction and maintenance of public roads; and to establish the Kenya National Highways Authority; Kenya National Urban Roads Authority; and the Kenya National Secondary Roads Authority. The Institute has reviewed the provisions of the Bill and developed draft proposals to be submitted to the National Assembly for consideration.

Table: Summary of the proposals on the Roads Bill 2017

Clause	Provision in the Bill	Issue of Concern	Proposed Amendment	Justification
1. Clause 7: Composition of Public Roads Standards Board	The Board shall consist of a representative from each of the following: State Department Responsible for Public Roads; State Department Responsible for matters related to Devolution; Kenya National Highways Authority; Kenya National Urban Roads Authority; Kenya National	Composition of the Board is majorly drawn from Government Agencies. This may prevent the board from benefiting from expertise outside government especially from the Private Sector and other important Non-State Actors	Relook the composition of the Public Roads Standards Board. Amend to include a) Institute of Certified Public Accountants of Kenya b) Kenya Institute of Planners c) Institution of Surveyors of Kenya	Improves diversity. The Board will largely benefit from expertise drawn outside government agencies. Expand membership to bring in expertise on inventory management and valuation of public roads

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		<p>Secondary Roads Authority; Kenya Roads Board; Institution of Engineers of Kenya; National Agency Responsible for testing and research on Roads; National Transport and Safety Authority</p>			
2.	<p>Clause 10(2) Classification of National and Trunk Roads</p>	<p>The Bill provides that Where a new road is established, the responsible Authority or county government shall submit to the Cabinet Secretary a request for classification of the road —</p>	<p>Classification of roads should be done by an independent body not the Cabinet Secretary, who is a member of the National Government yet the decisions affects the County Governments as well. The Public Roads Standards Board is the ideal body.</p>	<p>Amend 10(2) by deleting Cabinet Secretary and replacing with Public Roads Standards Board.</p> <p>“Where a new road is established, the responsible Authority or county government shall submit to the Public Roads Standards Board a request for classification of the road and the Public Roads Standards Board shall assign the road in accordance with the classification that accurately reflects the function served by the</p>	<p>Classification of Roads affects both the National and County Governments thus it’s fair to have an independent body making the ultimate decisions.</p>

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			road for purposes of ensuring that —		
3.	Clause 11: Inventory on classification and assignment of roads	Each Authority and each county government shall cause to be maintained an up to date inventory of roads under its management	There are scant details on inventory management. There's need for more information especially on the valuation of the roads.	The Cabinet Secretary should establish for guidelines for valuation of public roads in inventory management.	To help in estimation of asset renewal (especially in reconstruction of roads).
4.	Director General as Secretary to the Boards established(14(e); 17(e); and 20(e))	The Bill stipulates that in all the Boards established, the Director-General shall serve as the Secretary to the Board;	This is not a best corporate governance practice. The CEO's should not be Secretaries of the Board; instead they should employ qualified Company Secretaries for that purpose. This is in line with Mwongozo Code of Governance	Amend by deleting parts of clauses granting the Director General powers to serve as Secretaries. Every Board shall, <i>“Employ a qualified Company Secretary to serve as the Secretary to the Board”</i>	Best corporate governance practice
5.	Clause 22: Qualifications for Appointment of Chairpersons and Members of the Board	The Bill provides for qualifications for appointment to the Board; the Clause further stipulates instances in which a member can be disqualified	The section ought to have provided for instances where a member is disqualified on grounds of violating professional code of ethics. This applies mainly for nominees from ICPAK, IEK, LSK, Institute of Surveyors of Kenya; and the Kenya Institute of Physical Planners	Insert a new section 22(2)(f) If in breach of conditions for nominations adopted by the nominating institutions identified under clauses 14, 17 and 20. Insert a Sub clause to read,	Ensures that members nominated by professional bodies adhere to the set code of ethics and other conditions for nominations

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			<i>“ceases to be a member by virtue of the withdrawal of his or her nomination to the Board by the nominating institution”</i>		
6.	Clause 24: Terms and Conditions of Service	Provides that the Chairperson and Members of each board shall hold office for a period of three years and shall be eligible for appointment for a further one term	There is lack of succession planning since the terms of all the members’ lapse at the same time. There is need to address this matter by way of providing for staggered terms.	Provide for staggered terms for the members to ensure a phased transition. A third of the members should retire in the first two years of the term	This ensures seamless transition and continuity in the management of Boards created
7.	Clause 27: Committees of a Board	A board may establish committees necessary for the discharge of its functions. It also allows the Board to co-opt any person whose knowledge and skills are necessary to the Board	The provision does not provide a cap on the number of Committees that a Board should establish. This may lead to abuse by Authorities	Add the following provisions 27(1) A Board shall establish not more than four committees 27(2) A Board shall be at liberty to establish such ad hoc committees as required to deal with any ad hoc matters requiring focused attention	Make reference to Mwongozo Code as the best practice
8.	Clause 29(4)	The Director-General shall be appointed for a term of three years and	The three-year tenure proposed is not in line the current best corporate governance practices.	Amend to read, “The Director-General shall be appointed for a	The term of the Director - Generals should be four (4)

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	shall be eligible for re-appointment for one further term of three years		term of four years and shall be eligible for re-appointment for one further term of four years”	years renewable once in line with Mwongozo Code of Governance.
9. Clause 102	Employees of the former Roads Authorities shall immediately be employees of the Kenya National Highways Authority and the Kenya National Secondary Authority	If not well managed, the reassignment of staff may lead to redundancy and duplication of roles and functions by staff in the new Authorities	<ul style="list-style-type: none"> - Can they be redeployed in the larger public service? - Carry out staff rationalization and skills audit before redeployment 	It is important to address transitional staff issues that can lead to redundancy, duplication and overlap which in turn may affect delivery of services by the new Roads Authorities
10. Third Schedule	-	Funding for the Public Roads Standards Board is not provided for.	Provide for funding through the Roads Fund as established by the Kenya Roads Board Act	To consolidate management and funding of roads under a single fund
11. Road “Authorities” to Road Services	The Bill makes reference and establishes to Authorities	It is preferable that Road “ <i>Authorities</i> ” be referred to us Road “ <i>Services</i> ”. This should endear them to service delivery rather than authoritative tendencies. The term “ <i>Authorities</i> ” should be left to regulatory bodies.		