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KISUMU COUNTY BILLS, 2019

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THE KISUMU COUNTY ROADS BILL, 2019

A Bill for

AN ACT of the County Government to provide for the classification, financing, management, construction and maintenance of public roads; to establish the Kisumu County Roads Maintenance Board; and to provide for the functions and powers of the Agency; and for connected purposes

ENACTED by County Government of Kisumu as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Kisumu County Roads Act, 2019.

Commencement

2. This Act shall come into operation on such date as the Executive Committee member responsible for roads may, by notice in the Gazette appoint, and different dates may be appointed for different provisions.

Interpretation

3. In this Act—

“annual roads works programme” means a roads programme prepared by the Board or in accordance with the Kenya Roads Act for the development, construction, maintenance or management of a road under this Act;

“Board” means the Kisumu County Roads Maintenance Board established in accordance with this Act;

“Executive Committee Member” means the member of the Executive Committee responsible for matters relating to roads;

“class” in relation to a road, means the categorization assigned to it under national legislation;

“construction” means supervision, inspection, building, and includes locating, surveying, mapping and eliminating road hazards;

“county road” means a county road classified as such under national legislation;

“public road” has the same meaning as assigned to it under section 2 of the Public Roads and Roads of Access Act.

Objects

4. The object of this Act is to give effect to the Part 2 of the Fourth Schedule of the Constitution in relation to the functions on roads and to review and rationalize the legal and institutional framework for the management of the road network in the County

Guiding Principles

5. In the performance of their functions and the exercise of their powers, the Board, shall be guided by the following principles —

- (a) the national values and principles of governance specified under Article 10 of the Constitution;
- (b) the principle of co-operation between the national and county governments as envisaged under Article 189 of the Constitution and between the State and non-State actors in the development and management of the road sector;
- (c) the principle of public participation in the development of policies, plans, programmes and budget processes for the development and management of roads;
- (d) transparency, accountability and adoption of sound financial and management principles in the development and maintenance of roads;
- (e) efficiency and effectiveness in the management of the road sector; clear assignment of responsibilities between the national and county government in the development, maintenance and management of roads;
- (f) empowerment of local community and county private sector;

Application and reservations

6. (1) Subject to subsection (2), this Act shall apply to all public roads within the County.

(2) Despite subsection (1), this Act shall not apply to national trunk roads, national parks and reserves which are under the management and control of Kenya Wildlife Service.

(3) This Act reserves the rights and privileges of national authorities and agencies established in accordance with the Constitution or national legislation.

Classification of county roads

7. (1) A County public road shall be classified in the manner provided in a national legislation.

(2) Where a new road is established, the Board shall submit to the Executive Committee member a recommendation for classification of the road, and the Executive Committee member shall subject to this Act or national legislation assign the road in accordance with the classification that accurately reflects the function served by the road for purposes of ensuring that—

- (a) the classification accurately reflects the function served by the road; and
- (b) all parts of the county have reasonable access to a national trunk road or a county road.

(3) The Executive Committee member may on his own initiative or on the recommendation of the Board, from time to time, review the classification and assignment of public roads under subsection (2) for purposes of ensuring that—

- (a) the classification accurately reflects the function served by the road; and
- (b) all parts of the county have reasonable access to a national trunk road or a county road.

Inventory of county roads

8. (1) The Board shall cause to be maintained and kept an up to date inventory of the roads under its management, in such form and with such detail, including categorization and identity details, as prescribed by the Executive Committee Member.

(2) The Executive Committee Member shall at least once in every 3 years publish the inventory under subsection (1) in the Gazette.

PART II—ESTABLISHMENT OF COUNTY ROADS MAINTENANCE BOARD

Establishment of the County Roads Maintenance Board

9. (1) There is established the Kisumu County Roads Maintenance Board.

(2) The Board established under subsection (1) shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) doing or performing all such other things or acts as may be necessary for the furtherance of its purpose and functions.
- (c) The headquarters of the Board shall be in Kisumu City, but the Board shall establish such administrative offices headed by sub-county administrators in each sub-county, as may be necessary for the furtherance of its functions under this Act.

Functions of the Board

10. (1) The Board shall be responsible for the management, development, rehabilitation and maintenance of county roads as specified in national legislation and construction of rural access roads.

(2) For the purposes of discharging its responsibility, the Board shall have the following functions and duties—

- (a) Rehabilitating and maintaining roads under its jurisdiction;
- (b) controlling county roads and road reserves and access to roadside developments;
- (c) implementing road policies in relation to county roads;
- (d) ensuring adherence to the rules and guidelines in accordance with this Act or national legislation;
- (e) ensuring that the quality of road works is in accordance with the standards prescribed by the Executive Committee Member responsible for roads;
- (f) overseeing the management of traffic and road safety on county roads, in collaboration with other agencies or national authorities;
- (g) collecting and collating all data related to the use of county roads as may be necessary for efficient planning under this Act;
- (h) monitoring and evaluating the use of county roads;
- (i) planning the development, financing and maintenance of county roads;
- (j) advising the County Executive Committee member on all matters relating to County roads;
- (k) preparing the investment programme and the annual road works programmes for all county roads;

- (l) liaising and coordinating with other road agencies in planning and on operations in respect of roads; and
- (m) performing such other functions related to the implementation of this Act as may be directed by the County Executive Committee.

(3) In the performance of its functions, the Board shall ensure that to the maximum possibility, employment opportunities in road maintenance and or construction are reserved to the youths ordinarily resident within the village in question.

Composition of the Board

11. (1) The Kisumu County Roads Maintenance Board shall be composed of—

- (a) a non-executive Chairperson to be appointed by the Governor;
- (b) the Chief Officer in the county department responsible for matters relating to roads;
- (c) the Chief Officer in the county department responsible for matters relating to transport;
- (d) the Chief Officer in the department responsible for Finance;
- (e) the County Attorney ;
- (f) the County Roads Engineer;
- (g) the Director of the Board appointed by the Governor, who shall be an ex-officio member and secretary to the Board;
- (h) five persons, sourced and appointed by the Governor from the following organizations —
 - (i) Institution of Engineers of Kenya branch representing Kisumu county;
 - (ii) Institute of certified Public Accountants of Kenya, resident within Kisumu County.
 - (iii) the Law Society of Kenya Kisumu branch;
 - (iv) Institute of Surveyors of Kenya for Kisumu County; and
 - (v) Kenya Chamber of Commerce branch representing Kisumu County;

(2) The members of the Board under paragraphs 1 (c) and (d) may designate an officer from their respective departments to represent them.

Functional Responsibility of the Board

12. (1) The Board shall be responsible for overseeing its operations for purposes of—

- (a) attaining equity in the development of road network in all parts of the County;
- (b) securing continuing improvements of performance;
- (c) protecting the long-term viability of the Board;
- (d) ensuring that financial needs of the Board are addressed; and
- (e) any other duties and responsibilities as may be undertaken in furtherance of their mandate in consultation with the Executive Committee Member.

(2) Without prejudice to the provisions of subsection (1), the Board shall ensure that—

- (a) appropriate strategic plans consistent with government roads subsector policy and targets are in place;
- (b) the Board has management structures and systems for monitoring management performance against plans and targets and that corrective action is taken where necessary;
- (c) appropriate systems and practices are established for management, financial planning and control, including systems and practices for the maintenance of accurate and comprehensive records of all transactions, assets and liabilities and physical and human resources of the Authority;
- (d) all such plans, targets, structures, systems and practices are regularly reviewed and revised as necessary to address changing circumstances and reflect best practices;
- (e) the Board observes high standards of corporate governance;
- (f) it advised the County Government, as soon as practicable, of any material development that—
 - (i) adversely affects the financial or operating capacity of the Board; or
 - (ii) gives rise to an expectation that the Board may not be able to meet its debts as and when they fall due; and
 - (iii) all information furnished by the Board is accurate and comprehensive.
- (g) Takes advice from the Village Council of the respective villages on the road work priorities within the Village Unit.

PART III—ADMINISTRATIVE PROVISIONS

Appointment of Chairperson and members of the Board

13. (1) A person shall be qualified for appointment as a chairperson or a member of the Board if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has knowledge and experience of at least 5 years in the relevant field; and
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A member of the Board appointed in accordance with this Act may be disqualified from office if the member—

- (a) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
- (b) is convicted of an offence involving dishonesty or fraud;
- (c) otherwise fails to comply with the requirements of Chapter Six of the Constitution;
- (d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
- (e) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his or her duties as a member of the Board.

(3) The procedure for the appointment of the chairperson and members of the Agency this Act shall be as set out in the Second Schedule to this Act.

Diversity of the board

14. (1) In appointing the chairperson and other members of the Board under this Act, the Governor shall ensure that—

- (a) the board reflects the regional diversity of the County; and
- (b) not more than two-thirds of the members are of the same gender.

Term of service and remuneration

15. (1) The chairperson and members of each board other than the ex-officio members and public officers shall hold office for a period of three (3) years and shall be eligible for re-appointment for one further term.

(2) The appointment of the members of the Board shall be by notice published in the Gazette.

(3) The Chairperson and members of a Board shall be paid such allowances as provided for in the applicable Salaries and Remuneration Commission Circular.

Meetings of the Board

16. The Board shall meet quarterly per year, provided that the chair person may on his own motion or by a requisition of a third of the members call for a special meeting to deal with urgent matters or matters that may arise.

Removal from office

17. A person shall cease to be the chairperson or a member of the Board, if that person—

- (a) resigns in writing to the Governor, in case of Chairperson; or
- (b) Violates the constitution, National or County legislation; or
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months; or
- (d) engages in gross misconduct; or
- (e) is absent from three consecutive meetings of the Board without the permission of the chairperson;
- (f) is declared bankrupt;
- (g) where such member is nominated by a professional association, is dismissed or suspended from such association;
- (h) is unable to perform the functions of his office by reason of mental or physical infirmity; or
- (i) dies.

Committees of the Board

18. (1) A Board may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.

(2) The Board may co-opt any person whose knowledge and skills are necessary for the performance of the functions of the Board to sit on any committee established under subsection (1).

(3). A person co-opted under subsection (2) above shall not vote.

Delegation of authority

19. A Board may, by resolution either generally or in any particular case, delegate to any of its committees, or to any of its members, officers or employees, the exercise of any of its powers or the performance of any of its functions under this Act or under any other written law.

Accounting Officer of the Board

20. (1) The Director for Roads shall be the secretary and accounting officer of the Board.

(2) The Director shall, subject to the direction of the Board—

- (a) be responsible for the day to day management of the Board;
- (b) manage the funds, property and affairs of the Agency;
- (c) be responsible for the management of staff of the Agency;
- (d) implement the policies, programmes and objectives of the Board;
- (e) cause to be prepared for the approval of the Board—
- (f) the strategic plan and annual plan of the Board; and
- (g) the annual budget and audited accounts of the Board; and
- (h) perform such other duties as may be assigned by the Board.

Appointment of agents, officers and staff

21. (1) The Board may, with the approval of a Public Service Board, appoint such officers, and staff as are necessary for the proper and efficient discharge of the functions of the Board under this Act in accordance with the establishment approved by the Board.

(2) The officers, and staff appointed under subsection (1) shall serve on such terms and conditions as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

(3) In appointing the officers, and staff of the Board, the Board shall observe the values and principles of public service provided under Article 232 of the Constitution, and shall ensure that no more than two-thirds of the members are of the same gender.

Structural organization of the Board

22. The Board shall establish such organizational structures and adopt such rules and procedures for the efficient administration of its activities as it may consider appropriate.

Protection from personal liability

23. An act done by the chairperson or member of the Board or an officer, employee or agent of the Authority, shall not if the act is done bona fides for the purpose of executing any provisions of this Act, render the chairperson or member, or that officer, employee or agent personally liable for any action, claim or demand.

Liability for certain damages

24. The provisions of this Act shall not relieve the Board of the liability to pay compensation or damages to any person for any injury to that person caused by the exercise of any power conferred, or by failure, whether wholly or partially, of any action under this Act.

Roads Maintenance Teams

25. (1) There is established Road Maintenance Teams in every Village Unit within the County.

(2) The Road Maintenance Teams shall be appointed by the Roads Maintenance Board in consultation with the respective Village Council.

(3) The Road Maintenance Teams shall comprise strictly of persons ordinarily resident within the respective village Unit, with priority being given to youths.

(4) The Roads Maintenance Team shall work under the guidance, direction and supervision of qualified officers assigned by the Board from the Department Responsible for Roads.

(5) The Board shall determine the manner of and remuneration of the Roads Maintenance Team.

(6) The Road Maintenance Board in consultation with the Village Council shall ensure that there is equity in distribution of work among the Roads Maintenance Team.

Annual report by the Board

26. (1) The Board shall, after the end of each financial year but within a period of four (4) months, submit to the County Executive Committee an annual report on its activities and operations.

(2) An annual report submitted under subsection (1) shall include—

- (a) information with regard to the progress and policy of the Board;
- (b) a copy of the audited accounts of the entity in respect of that year together with the report of the Auditor- General;

- (c) an overview of the operations of the entity;
- (d) an assessment of the degree to which performance targets have been achieved;
- (e) a general report on the degree in which the objectives of this Act have been realized, and the levels of compliance with the provisions of the Act; and
- (f) such other information as the Executive Committee member may request in writing.

Regulations

27. The Board may make Rules generally relating to the conditions of service of its employees, and Power to make Regulations relating to particular, but without prejudice to the generality of the foregoing, relating to—

- (a) the appointment, dismissal, discipline, pay and leave of, and the security to be given to its staff;
- (b) appeals by officers and staff against dismissal or other disciplinary measures; and
- (c) the establishment and maintenance of medical benefits and loan funds, and the contributions payable thereto and the benefits recoverable there from.

Authentication

28. (1) The affixing of the common seal of the Board may be authenticated by the signature of the chairperson and the Director.

(2) A document not required by law to be made under seal and all decisions of the Board, may be authenticated by the signature of the chairperson Director.

(3) Where the chairperson or the Director is absent, the Governor may nominate a member to authenticate the seal on their behalf.

Conduct of Business and Common Seal of the Board

29. (1) The conduct of business and affairs of the Board shall be conducted in accordance with the Second schedule.

(2) The common seal of the Board shall be kept in such custody as the Board may direct.

(3) The common seal of the Board when affixed to a document and authenticated shall be officially noticed, and unless the contrary is proved,

an order or authorization of the Board, under this section shall be presumed to have been given.

Acquisition of land

30. Where the Board requires any land for its purposes, the Executive Committee member shall submit a request for the acquisition to the National Land Commission, and the provisions of the Land Act, 2012 shall apply, provided that an Agency may in consultation with the National Land Commission pay directly any compensation due to any person whose land or property is acquired under the Land Act 2012, for the purposes of the Board.

Power to enter and survey land

31. (1) An authorized employee of the Board may, for the purposes of this Act, enter upon any land and survey such land or any portion thereof.

(2) Where any damage on the land is caused by reason of the exercise of the powers conferred by this section, the owner or occupier of the land shall be entitled to compensation in accordance with this Act.

Power to enter land to prevent accidents etc.

32. (1) Any authorized employee of the Board may, for the purposes of preventing the occurrence of an accident, preserving the safety of traffic or the safe operation of any service provided by the Board, or repairing any damage caused by an accident, enter upon any land and—

- (a) cut down or remove any tree or other obstruction, not being a building, which obscures the view of any traffic sign, which is likely to cause any obstruction or any danger to the safety of traffic or of any such service; or
- (b) execute such other works as may be necessary to prevent the occurrence of an accident or to repair any damage caused as a result of an accident.

(2) If a tree or other obstruction cut down or removed under subsection (1) (a) came into existence subsequent to the erection of a traffic sign or to the service being provided at that place, compensation shall not be payable in respect of the entry, or the cutting down or removal of the tree or other obstruction

Power to enter and to alter position of pipes etc

33. (1) Subject to the provisions of this section, the Board, or any of its authorized employees may, for the purposes of the Board, enter on any

land and alter the position of any electric, telephone, telegraphic fibre optic or other wire of any nature, or the position of any drain or sewer.

(2) Where the Board intends to exercise any power under subsection (1), it shall give reasonable notice of its intention to do so to the person having control of the pipe, wire, sewer or drain and—

- (a) such person may authorize a representative to superintend such work, and may require the Board to execute such work to the satisfaction of such representative; and
- (b) the Board shall make arrangements for the maintenance of the supply of gas, oil, compressed air or electricity, for the continuance of the telephone, telegraph or other wire-borne communications or for the maintenance of the sewer or drainage, as the case may be, during period of execution of such work.

Power to remove or relocate certain utilities

34. (1) For purposes of this section –

- (a) “pipe-borne utilities” refers to any pipes, devices and fittings for the supply or transmission of gas, oil products, water, wastewater, compressed air and any material conveyed by means of piping;
- (b) “wire-borne utilities” refers to wires, devices and fittings for the transmission of electricity, telephone services, telegraph services, data, and any other service conveyed by means of conductive wire, fibre optic cable or other wire or cable of any nature which is placed on the road reserve; and
- (c) “infrastructure utilities” refers to pipe borne utilities, wire-borne utilities, covered or open drains, and any other physical device for the provision, conveying or supply of services.

(2) Where an infrastructure utility is located within a road reserve, the provider or operator of the infrastructure utility shall, on a written request by the Board, relocate such infrastructure utility to a location or alignment approved by the Board at no cost to the Board.

(3) Where the Board intends to exercise any power under subsection (2), it shall give reasonable notice of its intention to do so to the person having control of such infrastructure utility, and such person shall cause to be removed such infrastructure utility within sixty days:

Provided that service of the notice through a newspaper of wide circulation in Kenya shall be considered to be a proper notice under this Act.

(4) Where, under subsection (2) or (3), a person having control of an infrastructure utility fails to remove the infrastructure utility within the time stated in the notice, the Board may remove such infrastructure utility at the cost of the person who was unable to comply with the notice under subsection (3).

Occupation of private land

35. (1) The Board may –

- (a) in the development, construction, rehabilitation or maintenance of a road;
- (b) in the construction of a temporary road for use by the public pending the carrying out of the road works under paragraph (a); or
- (c) in providing a temporary road for use by the public where a road has become impassable, use and occupy for such period as may be necessary for the carrying out of the road works, any land along or adjoining the road in relation to which the road works are to be carried out.

(2) The Board shall not occupy land under subsection (1) unless it has issued to the registered owner or occupier of the land, a notice of at least thirty days of its intention to occupy the land.

(3) The Board shall not be required to issue a notice under subsection (2) where—

- (a) in the opinion of the Board and with the concurrence of the Executive Committee member, it is necessary as a matter of urgency to use and occupy land that is more than fifteen metres from a dwelling-house for the purpose of reconstructing or repairing a particular road; and
- (b) the Board gives the occupier of the land such notice as is practicable in the circumstances and, immediately after giving the notice, reports to the Executive Committee member the circumstances requiring such a notice to be dispensed with.

(4) The Board shall not use or occupy land under subsection (1) where the land is located within fifteen metres of a dwelling house unless—

- (a) the occupier of the land has consented in writing to the use of the land for the occupation, or
- (b) if that consent is not given, the respective County Executive Committee member has given written authority for the use or occupation.
- (c) The Board shall compensate an owner of land for any loss or damage arising from the exercise of powers under this section.

Power to take water or access to material sites etc

36. (1) The Board may, for its purposes, take any water from any natural watercourse subject to the Water Act, 2002.

(2) Subject to the Constitution the Board may, by its agents and officers, for the purpose of the construction and maintenance of roads or the carrying out of any works which it is empowered under this Act or under any agreement, direction, delegation or transfer entered into, given or made under this Act to carry out, may enter upon land and remove there from any soil, clay, rock, gravel, murram, lime, sand, shale, shingle, slate or surface soil, and may carry across any land, by a route to be agreed between the owner and in the event of failure to agree, cause to be acquired compulsorily such land, and remove such material, and may provide within the land in connection with such functions labour or other camps, works buildings, access roads, and space for stockpiling, and may erect machinery and other gear for the purpose of quarrying any such material.

(3) Before entering upon any land for the purpose of exercising any of the powers conferred by subsection (1), the Board shall give not less than one month's notice by personal service or by registered post to the last known address of the owner or occupier of such land, of the intention to enter upon such land, the powers which it proposes to exercise, and the area of such land to which it will confine its activities.

(4) If the owner or occupier of such land is aggrieved by the proposed exercise by the Board of the powers conferred by this section or by the proposed exercise of the powers in the area specified in the notice, he may, within one month from the service upon him of the notice under subsection (3), make representations to the National Land Commission thereon and shall within the same period inform the Board of the nature of such representations.

(5) Where representations are made to the National Land Commission under subsection (4), the National Land Commission may, after consulting the Board concerned, give such direction to the Board thereon as it thinks fit.

(6) Compensation shall be payable by the Board to the owner or occupier of any land for any damage done to buildings, roads or crops, or otherwise, in the exercise by it of any of the powers conferred upon it by this section, and for any interference with the rights of occupancy of such land.

(7) If, as a result of the exercise of any of the powers conferred by this section, a danger to persons (other than employees of the Board or of their agents) or to domestic animals is created, the Board shall, at the request of the owner or occupier of the land, carry out fencing at its own expense to such an extent as adequately to guard against such danger.

(8) The sites for any labour or other camps to be provided by the Board and the alignment of any roads of access shall be determined by the road authority only after consultation with the owner and occupier of the land on which the same are to be situated.

(9) Any pit or quarry made in exercise of any of the powers conferred by this section shall, at the request of the owner or occupier of the land, be filled up or, in the discretion of the Board, fenced, at the expense of the Board, when the Board abandons such pit or quarry.

(10) This section shall be subject to the Forests Act and any rules made thereunder, and to the extent of any inconsistency between this section and that Act and any rules thereunder, the latter shall prevail.

(11) For the purpose of this section, the expression "owner or occupier" means in respect of Government land, the National Land Commission, in respect of Trust land (other than land the title to which is registered under the Land Consolidation Act) means the county, and in respect of forest areas, means the Chief Conservator of Forests.

Power to divert roads

37. (1) The Board may, for its purposes, temporarily close or divert a public road and similarly close or to divert a county road permanently.

(2) It shall be lawful for the Board or its authorized representative, for the purpose of preventing damage being caused to any road or for the purpose of carrying out any works which it may consider necessary or desirable in connection with the maintenance or improvement of a road, to close the whole or any part of such road to all vehicles or any particular type of vehicles at any time for any period it may think fit.

(3) It shall be unlawful for the driver or person in charge of any vehicle to drive or haul the vehicle or cause it to be driven or hauled over any portion of a road which is closed to traffic and where a conspicuous notice is displayed to the effect that the road is closed, unless the driver or

person in charge of the vehicle has received permission, in writing, from the Board or relevant national Authority.

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

Railway crossing

38. (1) Subject to subsection (2), where a railway has been or is proposed to be constructed so as to cross a road, the Board shall require the owner or operator of the railway to erect such gates and to execute such other works as may be necessary for the safety of the public.

(2) The Board shall, before making any requirement under this section, communicate with the owner or operator of the railway and shall take into consideration any representations made by the owner or operator.

(3) Where as a result of a requirement made by the Board under this section, any works are to be constructed by the owner or operator of the railway, the manner of construction of such works and the apportionment of the cost of construction and maintenance thereof shall be determined by an agreement between the owner or operator of the railway and the Board, and if no such agreement is made, it shall be determined by an arbitrator appointed by the Executive Committee member responsible for roads.

Certain powers relating to inter-county roads

39. (1) The Board shall have power to require the owner of any land to remove, lower or trim to the satisfaction of the Board any tree, shrub or hedge overhanging or interfering in any way with the traffic on any road or with any wires or works within the road.

(2) In this section—

“Inter-county road” includes a bridge, drain and other services associated with a road and that crosses or runs along the boundaries of more than one county government.

(3) The Board shall in consultation with the Executive Committee member responsible for roads be responsible to maintain an inter county road in accordance with the terms agreed between Kisumu County Government and the relevant county government.

(4) The Executive Committee member shall in consultation with the Board, where a county road crosses or runs along the boundaries of another county, enter into an agreement in accordance with a national legislation and this Act.

County bridges

40. (1) A driver or a person in charge of a vehicle shall not drive or haul a vehicle or cause it to be driven or hauled over any bridge on or near

a conspicuous notice which has been placed to the effect that such bridge is insufficient to carry traffic in excess of a specified weight, unless—

- (a) the gross weight of the vehicle and any trailer attached thereto is less than the weight specified; or
- (b) the driver or person in charge of the vehicle has obtained the consent, in writing, of the relevant national Authority or the County Agency.

(2) Where a road or bridge is damaged—

- (a) by reason of a vehicle passing over it in contravention of the provisions of subsection (1) or of the Cap. 403. axle load restrictions under the Traffic Act, East African Community Vehicle Load Control Act or the provisions of any regulations made under this Act; or
- (b) by reason of any vehicle passing over a bridge on the road or coming into contact with any portion thereof other than the surface of the road,
- (c) it shall be lawful for the Board to make good such damage and to recover the cost thereof from the owner of the vehicle, and the person driving or hauling it shall be jointly and severally liable to the Board for the damage.

(3) A certificate under the hand of any person authorized on that behalf by the Board stating the amount of the cost of making good such damage under subsection (2) shall be prima facie evidence of such cost.

Road user charges

41. (1) The County Executive Committee Member responsible for the county treasury may make Regulations in accordance with this section authorizing the imposition and collection of road user charges by the Board in respect of roads, including inter-county and county roads.

(2) A road user charge shall be a charge levied in respect of the distance travelled by a vehicle on a road—

- (a) for the purpose of recovering the cost of maintaining, repairing and replacing the road; and
- (b) reasonably related to the impact of that vehicle on such cost.

(3) Regulations made under this section shall be tabled before the County Assembly for approval, and shall not take effect until such approval is obtained.

- (4) The Regulations made under this section may provide for—
- (a) charges related to the weight of the vehicle, including exemption from charges for vehicles below a minimum weight;
 - (b) exemptions for classes of vehicles whose purpose or design means they are unsuitable for regular road use, or for vehicles used primarily off-road;
 - (c) any other provision necessary or desirable for the equitable distribution of the burden of the charge on road users;
 - (d) a requirement that road users subject to the charge must be licensed;
 - (e) the requirement that vehicles carry distance recorders;
 - (f) the allocation by the Roads Fund of the net proceeds of the charges among national and county roads; and
 - (g) any other matter necessary or desirable in connection with administration and imposition, collection and enforcement of charges.

PART IV—FINANCIAL PROVISIONS

Financial year

42. (1) The financial year of the Board shall be the period of twelve months commencing on the 1st of July in every year and ending on the 30th of June in the next succeeding year.

(2) Without prejudice to subsection (1), the first financial year shall be the period commencing on the appointed date of this Act and ending on the 30th June subsequent to that date.

Funds of the Board

43. The funds and resources of the Board shall consist of —
- (a) monies paid to it from the Road Fund;
 - (b) any other monies appropriated by the County Assembly;
 - (c) funds accruing from investments made by the Authority;
 - (d) grants, loans, gifts or donations from the national or county government or any other source, made with the approval of the Executive Committee member responsible for county treasury or in case of funding by a national agency, the Cabinet Secretary responsible for finance;

- (e) revenue earned from the activities of the Board under this Act; and
- (f) any other funds received by the Board in the performance of its functions under this Act.

Balances to be retained in the fund

44. The receipts, earnings or accruals of the Board and the balances at the end of each financial year shall be retained for the purposes for which the respective Authority is established.

Preparation of the budgets of the Board

45. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of revenue and expenditure for that year.

(2) The annual estimates prepared under subsection (1) shall make provision for all the estimated expenditure of each Board, for the financial year concerned, and in particular shall provide for the—

- (a) payment for the infrastructural developments and provision of services;
- (b) payment of salaries, allowances and other charges in respect of the employees and staff of the Board and the members of the Board;
- (c) payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the Roads Fund;
- (d) acquisition, maintenance, repair and replacement of the equipment and other movable property of the Board; and
- (e) creation of such funds to meet future or contingent liabilities in respect of benefits, insurance and the replacement of buildings or equipment.

(2) The annual estimates under this section shall be approved by the Board at least two months before commencement of the financial year to which they relate, and shall be submitted to the Executive Committee member responsible for roads for the purposes of incorporation into the county budget.

Books of the Board

46. (1) The Board shall keep proper books of account of its income, expenditure, assets and liabilities which shall be subject to the provisions of the law regulating State Corporations.

(2) The annual accounts prepared under subsection (1) shall be audited and reported in accordance with the provisions of the law relating to public audit.

Annual road works plan

47. The Board, not later than six months before the end of each financial year, cause to be prepared and submitted to the Executive Committee member responsible for roads for approval an annual road works plan based on the approved five-year road investment program in respect of the ensuing financial year, comprising estimates of expected maintenance, development and capital expenditure of the Board in the said financial year to be financed.

Roads investment plan

48. (1) The Executive Committee member shall, once in every three years, in consultation with the national and county government and the Kenya Roads Board, cause to be prepared a county road investment plan with recommendations for incorporation in the national road investment programme.

Financial principles

49. The Board shall perform its functions in accordance with the financial principles and shall ensure, as far as reasonably practicable, that its expenditure is chargeable on its revenue.

Power to levy charges or fees

50. The Board may, subject to the approval of the Executive Committee member, impose any levy, charges or fees for any of its services or for the use of road reserves under their jurisdiction.

Fees to be published in the Gazette

51. (1) Where an Authority, pursuant to section 45 imposes levies, charges or fees for any of its services or for use of its facilities, the schedule of charges shall be published in the Gazette.

(2) The schedule of charges published under subsection (1) shall come into operation on a date specified on the Gazette, which shall be at least thirty days after publication.

(3) If any amount due and payable under this section is not paid by any party after demand by the Agency, and remains unpaid beyond the time specified for payment, the Board may seize the vehicle or other property of the debtor after giving reasonable notice of such seizure, and may detain such vehicle or property until payment is made.

PART V—MISCELLANEOUS PROVISIONS**Power to make regulations**

52. (1) The Executive Committee member may, in consultation with the Board make Regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may provide for—

- (a) subject to national legislation and this Act, guidelines for public-private sector partnerships in development projects including guidelines on ownership of assets, equity, participation, sharing of returns, community participation in future earnings from the project, compensation mechanisms and payment of fees;
- (b) the use, safety or maintenance of the roads falling within its responsibility;
- (c) the erection of structures on, near, over or under the roads falling within its responsibility;
- (d) the drainage of streets, lands, compounds and buildings adjacent to the road;
- (e) the level, width and construction of roads and streets under the responsibility of the county government;
- (f) the removal, demolition or alteration of any projection, structure or thing obstructing a road or likely to cause damage or inconvenience to road users;
- (g) the fees payable for services provided by the Board or the manner of their application;
- (h) monitoring and evaluation mechanisms for projects undertaken under this Act;
- (i) the holding of joint meetings of the Board;
- (j) the detention of vehicles or impoundment of property; and
- (k) road numbering and signage system.

(3) The power to make Regulations conferred under this Act shall be—

- (a) for the purpose and objective of giving effect to the Constitution, national legislation and this Act;

(b) limited to the nature and scope specifically stipulated in the Constitution, national legislation and this Act; and

(c) based on the general principles and standards contained in the Constitution and this Act.

(4) Regulations made under subsection (1) may prescribe penalties, in respect of any contravention of any provision

(5) The Executive Committee member shall review and revoke all legal notices establishing the former authorities, and departments whose functions, by virtue of this Act, falls under the purview of the powers and functions of the Board, in order to enable the transfer of the functions, assets, and liabilities of the former authorities to the Board, as contemplated under this Act.

MEMORANDUM OF REASONS AND OBJECTS

The principal object of this Bill is to provide for the classification, financing, management, construction and maintenance of public roads; to establish the Kisumu County Roads Maintenance Board; and to provide for the functions and powers of the Agency.

The structure of the Bill is as follows:

Part I of the Bill contains preliminary provisions. These include the title and commencement, objects of the Act and interpretation of terms, Guiding Principles, Applications and Reservations, Classification of county roads and Inventory of County Roads.

Part II provides for the Establishment of County Roads Maintenance Board, functions of the board, composition of the board, functional responsibility of the board

Part III contains provisions relating to Administrative provisions which include Appointment of chairperson and members of the board, diversity of the board, terms of service and remuneration, meetings of the board, removal from office, committees of the board, delegation of authority, accounting officer of the board, appointment of agents, officers and staff, structural organization of the board, protection from personal liability, liability for certain damages, roads maintenance teams and annual report by the board among other provisions

Part IV relates to Financial provisions which include the Financial year, funds of the Board, preparation of budgets of the board, books of the board, annual roads work plan, Roads investment plan, financial principles, etc.

Part V contains miscellaneous provisions.

The enactment of this Bill shall occasion additional expenditure of Public funds which shall be provided for in the Annual estimates of the Kisumu County Government.

Dated the 31st October, 2019.

SETH OCHIENG KANGA,
Chairperson, Transport, Roads and Public Works Committee.