



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – SECOND SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

WEDNESDAY, APRIL 18, 2018 (AFTERNOON)

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Honourable Speaker
4. **MESSAGE FROM THE SENATE**

The Speaker conveyed the following Message from the Senate –

“Honourable Members,

Standing Order 41(4) requires the Speaker to report to the House any Message(s) received from the Senate at the first convenient opportunity. In this regard, I wish to report to the House that on Wednesday, April 17, 2018, I received three Messages from the Senate regarding passage of various Bills.

The First Message relates to the passage of the County Governments (Amendment) Bill (Senate Bill No. 11 of 2017) on Thursday, March 29, 2018. Among other objectives, the Bill seeks *“to amend the County Governments Act No. 17 of 2012 to clarify on commencement and sitting of a County Assembly; put in place a legal mechanism for the establishment of the office of the Deputy Speaker of a County Assembly; and provide for the legal framework for assumption of the office of Governor by the Deputy Governor and the appointment of a new Deputy governor.”*

Honourable Members, the second Message is conveying the passage of the Urban Areas and Cities (Amendment) Bill (Senate Bill No. 4 of 2017). The Bill seeks *“to amend the Urban Areas and Cities Act No. 13 of 2011 to provide for review of the criteria for classifying an area as a city, municipality, town or market centre; and their governance and management.”*

Honourable Members, the last Message is on the passage of the Warehouse Receipts Bill (Senate Bill No. 10 of 2017). The Message states in part, that *“The Warehouse Receipts Bill (Senate Bill No. 10 of 2017) was published to provide for a legal framework for the development and regulation of a warehouse receipt system for agricultural commodities to address marketing challenges associated with cereals and grain subsectors in Kenya.”*

Standing Order 143(1)(a) requires the Speaker to cause a Bill received from the Senate to be read a First Time upon conveyance of a Message from the Senate referring Bills to the National Assembly. Accordingly, I direct that the three Bills be read a first Time at the next Sitting.

Honourable Members, paragraph (2) of Standing Order 143 provides that –

*“Following First Reading, the Speaker shall, within reasonable time, pronounce his or her **opinion** contemplated under Article 114(2) of the Constitution.”*

The opinion envisaged under Standing Order 143(2) is a pronouncement, by the Speaker, as to whether a Bill originating in the Senate is a ‘Money Bill’ in the terms of Article 114 of the Constitution. In this regard, I have requested the Clerk of the National Assembly to refer the three Bills to the Parliamentary Budget Office to offer advice that will enable the Speaker to form the opinion contemplated in Standing Order 143(2). Thereafter, I shall guide the House accordingly on how to proceed with the consideration of the said three Bills from the Senate.

Thank you”.

5. PETITION

The Speaker conveyed the following Petition -

Conveyance of a Petition on the review of Articles 137 of the Constitution on qualification and disqualifications for election as President

“Honourable Members,

Pursuant to Standing Order 225 (2) (b), I wish to convey to the House that my office is in receipt of a Petition signed one Mr. Mohamed Mohamed Sheikh, a resident of Wajir County. The Petitioner is praying that National Assembly to exercise its legislative authority under Article 95 and 256 (1) of the Constitution, by introducing and passing a Bill to amend the Constitution to set the age limit of eligibility to run for election as President of the Republic of Kenya at seventy (70) years.

Honourable Members, the Petitioner contends that Article 260 of the Constitution classifies a President as a State Officer and by extension a Public Officer, who like other State Officers, does exercise delegated authority from the people of Kenya. He further contends that other State Officers are subjected to a retirement age, and therefore it is reasonable and justifiable, in an open and democratic society, to introduce a retirement age for the President and set age limit to qualify as a Presidential candidate.

Honourable Members, this Petition therefore stands committed to the Departmental Committee on Justice and Legal Affairs for consideration. The Committee is requested to consider the Petition and report its findings to the Petitioner and the House in accordance with Standing Order 227 (2). The Committee is also at liberty to introduce a Bill to the House, proposing to make the amendments as proposed by the Petitioner and should undertake to hear the Petitioner.

Thank you”.

6. PAPERS LAID

The following Papers were laid on the Table –

a) The Reports of the Auditor-General on the Financial Statements in respect of the following Institutions for the year ended 30th June, 2017 and the certificates therein:-

- (i) Tourism Regulatory Authority; and
- (ii) Kenya Vision 2030 Delivery secretariat.

b) The Third and Fourth Annual Reports of the Office of the Director of Public Prosecutions for the Financial Years 2014/2015 and 2015/2016 respectively.

(The Leader of the Majority Party)

7. NOTICE OF MOTION

The following Notice of Motion was given-

THAT, aware of the socio-economic benefits of sports; recognizing that sports can, and does, make great and positive economic, health, and social and cultural impacts on individuals, communities and wider society; further aware that sports can be a major source of employment and foreign exchange earnings in the Kenya with potential to improve the country' economy on a large scale, if it well harnessed; deeply concerned that the standards of sports in Kenya in many disciplines remain low due to among other things, inadequate investment, scouting and nurturing of talent; cognizant that Section 33(4) of the Sports Act, 2013 establishes the Kenya Academy of Sports, and further Section 34(a) of the Act provides that the functions of the Academy shall be to among other things, establish and manage sports training academies; appreciating that Article 6(3) of the Constitution provides that a national State organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do having regard to the nature of the service, this House urges that the Government through the Ministry of Sports, Culture and Arts to establish sports academies in every Constituency.

(Hon. Godfrey Osotsi)

8. PROCEDURAL MOTION – REDUCTION OF PUBLICATION PERIOD OF BILLS

Motion made and Question proposed –

THAT, notwithstanding the provisions of Standing Order 120, this House resolves to reduce the publication period of the following Bills from 14 to 8 days -

- (i) The County Governments Retirement Scheme Bill (National Assembly Bill No. 10 of 2018)
- (ii) The Tax Laws (Amendment) Bill (National Assembly Bill No. 11 of 2018)
- (iii) The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 12 of 2018)

- (iv) The Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bill No.13 of 2018)

(The Leader of the Majority Party)

Debate arising;

Question put and agreed to.

9. THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2018)

(The Leader of Majority Party)

Order for First Reading read;

Bill read a First Time. Referral to the relevant Departmental Committee pursuant to Standing Order 127(1) pended awaiting Speaker's determination as to whether it is a 'Money Bill' in terms of Article 114 of the Constitution.

10. THE TAX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 11 OF 2018)

(The Leader of Majority Party)

Order for First Reading read;

Bill read a First Time. Referral to the relevant Departmental Committee pursuant to Standing Order 127(1) pended awaiting Speaker's determination as to whether it is a 'Money Bill' in terms of Article 114 of the Constitution.

11. THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2018)

(The Leader of Majority Party)

Order for First Reading read;

Bill read a First Time and referred to Liaison Committee pursuant to Standing Order 217(2)(f) to determine relevant Departmental Committees to consider appropriate statutes proposed to be amended.

12. THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (No.2) BILL (NATIONAL ASSEMBLY BILL NO. 13 OF 2018)

(The Leader of Majority Party)

Order for First Reading read;

Bill read a First Time and referred to Liaison Committee pursuant to Standing Order 217(2)(f) to determine relevant Departmental Committees to consider appropriate statutes proposed to be amended.

13. MOTION – REPORT ON THE VETTING OF THE NOMINEE FOR APPOINTMENT AS MEMBER OF THE JUDICIAL SERVICE COMMISSION

Motion made and Question proposed –

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the Vetting of the nominee for appointment as a Member of the Judicial Service Commission, laid on the Table of the House on Thursday, April 12, 2018, **subject to deletion of Recommendation No. (iii) appearing on page 19 of the Report**, and in furtherance to the provisions of Article 171(2)(c) as read together with Article 250(2)(b) of the Constitution, this House **resolves** as follows –

- (i) **THAT**, taking cognizance that the *ex-parte* conservatory High Court orders of 27th March, 2018, prohibited the National Assembly from vetting Hon. Justice Mohamed Abdullahi Warsame, (J.A) for appointment as a member of the Judicial Service Commission, and prohibited the National Assembly from exercising its approval authority as required under Article 250(2)(b) of the Constitution, pending the outcome of the court case;
- (ii) **THAT**, recognizing that the *ex-parte* conservatory High Court orders of 27th March, 2018, also prohibited the House from exercising the vetting and approval requirements set out in sections 3, 6, 7 and 8 of the Public Appointments (Parliamentary Approval) Act, 2011 within the time period established by sections 8 and 13 of the said law;
- (iii) **NOW THEREFORE**, the National Assembly, having been prohibited from confirming the suitability of Hon. Justice Mohamed Abdullahi Warsame, (J.A) for appointment as a member of the Judicial Service Commission, as contemplated under Article 250(2)(b) of the Constitution, within the time period set out in law, **is unable to approve** his appointment as a member of the Judicial Service Commission.

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Debate on the Motion having been concluded on Tuesday, April 17, 2018;

Question put and agreed to.

14. THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 52 OF 2017)

Order for Second Reading

Motion made and Question proposed –

THAT, the Public Private Partnerships (Amendment) Bill (National Assembly Bill No.52 of 2017) be now read a Second Time

(The Leader of the Majority – 17.04.2018)

Debate on the Second Reading having been concluded on Tuesday, April 17, 2018;

Question put and agreed to;

Bill read a Second Time and committed to the Committee of the whole House tomorrow.

15. COMMITTEE OF THE WHOLE HOUSE

Order for Committee read;

The Kenya Roads Bill (National Assembly Bill No. 47 of 2017)

IN THE COMMITTEE

The Chairperson of Committees in the Chair

The Kenya Roads Bill (National Assembly Bill No. 47 of 2017)

Clauses 3, 4, 5, 6 - agreed to

Clause 7 - amendment proposed –

THAT, Clause 7 of the Bill be amended be amended in sub-clause (1) by deleting paragraph (h) and substituting therefor the following new paragraph
“(h) the Engineers Board of Kenya; ”

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 7 - as amended agreed to

Clauses 8 & 9 - agreed to

Clause 10 - amendment proposed –

THAT, Clause 10 of the Bill be amended in the marginal notes by deleting the words “Classification of national trunk and county roads” and substituting therefor the words “Classification of public roads”.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 10 - as amended agreed to

Clauses 11 and 12 - agreed to

Clause 13 - amendment proposed –

THAT, Clause 13 of the Bill be amended in sub-clause (2) by–

- (a) inserting the words “including through public private partnerships” at the end of paragraph (a);
- (b) inserting the words “Classes S,A and B” immediately after the words “national trunk roads” appearing in paragraph(b);
- (c) inserting the words “Classes S,A and B at the end of paragraph (c);
- (d) inserting the words “and any other regulations under this Act” immediately after the word “Act” appearing in paragraph (d); and
- (e) inserting the following new paragraph immediately after paragraph (d) –
“(da) controlling, operating and managing toll roads under its jurisdiction ;”

- (f) inserting the words “Classes S,A and B” immediately after the words “national trunk roads” appearing in paragraph(f);
- (g) inserting the words “Classes S,A and B” immediately after the words “national trunk roads” appearing in paragraph(g);
- (h) inserting the words “Classes S,A and B at the end of paragraph (h);
- (i) inserting the words “Classes S,A andB at the end of paragraph (i);
- (j) inserting the words “Classes S,A and B at the end of paragraph (j); and
- (k) inserting the words “Classes S,A and B at the end of paragraph (k).

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, Clause 13 of the Bill be amended in sub clause (2) by inserting the following new paragraph immediately after paragraph (b)—

“(ba) overseeing roadside developments to ensure compliance with the provisions of this Act and guidelines as may be prescribed by the Authority.”

(Hon. Tom Kajwang)

Debate arising;

Question put and agreed to;

Clause 13 - as amended agreed to

Clause 14 - amendment proposed –

THAT, Clause 14 of the Bill be amended—

- (a) in sub-clause (2) by –
 - (i) deleting the words “from amongst the members appointed under paragraph (f) appearing in paragraph (a);
 - (ii) deleting the word “five” appearing in paragraph (f) and substituting therefor the word “two”;
 - (iii) deleting sub-paragraphs (ii),(iii)and(v) appearing in paragraph (f); and
 - (iv) inserting the following new paragraph immediately after paragraph (f) –
 - “(g) two persons appointed by the Cabinet Secretary through a transparent and formal process taking into consideration the regional and ethnic diversity of the people of Kenya.”
- (b) in sub-clause (3) by deleting the word “Authority” and substituting therefor the word “Board”.
- (c) in sub-clause (4) by deleting the figure “(1)” and substituting therefor the figure “ (2)”.
- (d) in sub-clause (5) by deleting the figure “(1)” and substituting therefor the figure “ (2)”.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, clause 14 of the Bill be amended by —

- (a) in sub-clause (3) by deleting the expression “(1)(b) to (d) and substituting therefor the expression “(1)(b), (c) and (d)”; and
- (b) in sub-clause (4) by inserting the word “each” immediately before the words “submit three.”

(Hon. Tom Kajwang)

Debate arising;

Question put and agreed to;

Clause 14 - as amended agreed to

Clause 15 - agreed to

Clause 16 - amendment proposed –

THAT, Clause 16 of the Bill be amended in sub-clause (2) by –

- (a) inserting the words “including through public private partnerships” at the end of paragraph (a);
- (b) inserting the following new paragraph immediately after paragraph (b) –

“(ba) overseeing roadside developments to ensure compliance with the provisions of this Act and guidelines as may be prescribed by the Authority.”

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 16 - as amended agreed to

Clause 17 - amendment proposed –

THAT, Clause 17 of the Bill be amended –

(a) in sub-clause (1) by –

- (i) re-numbering the existing sub-clause (1) as sub-clause (2); and
- (ii) inserting the following new sub-clause (1) –

“(1) There is established the Board of the Kenya National Urban Roads Authority.”

(b) in the proposed new sub-clause (2) by –

- (i) deleting the words “from amongst the members appointed under paragraph (f)” appearing in paragraph (a);

- (ii) deleting the word “five” appearing in paragraph (f) and substituting therefor the word “two”;
 - (iii) deleting sub-paragraphs (ii),(iii)and(iv) appearing in paragraph (f);
 - (iv) deleting the word “Physical” appearing in sub-paragraph (v) of paragraph (f) ;and
 - (v) inserting the following new paragraph immediately after paragraph (f) –
“(g) two persons appointed by the Cabinet Secretary through a transparent and formal process taking into consideration the regional and ethnic diversity of the people of Kenya.”
- (c) in sub-clause (3) by deleting the word “Authority” and substituting therefor the word “Board.” –
- (i) re-numbering the existing sub-clause (2) as sub-clause (3); and
 - (ii) deleting the words “Authority” in the proposed new sub-clause (3) and substituting therefor the words “ Board”.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Further amendment proposed -

THAT, Clause 17 of the Bill be amended—

- (a) in sub-clause (2) by deleting the expression “(1)(b) to (d) and substituting therefor the expression “(1)(b)(b), (c) and (d); and
- (b) in sub-clause (3) by inserting the word “each” immediately before the words “submit three”

Debate arising;

Question put and agreed to;

Clause 17 - as amended agreed to

Clause 18 - agreed to

Clause 19 - amendment proposed -

THAT, Clause 19 of the Bill be amended –

- (a) by deleting the words “and D” in sub-clause (1);
- (b) in sub-clause (2) by –
 - (i) inserting the words “including through public private partnerships” at the end of paragraph (a);
 - (ii) inserting the following new pararaph immediately after paragraph (b) –
“(ba) overseeing roadside developments to ensure compliance with the provisions of this Act and guidelines as may be prescribed by the Authority”

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 19 - as amended agreed to

Clause 20 - amendment proposed –

THAT, Clause 20 of the Bill be amended –

(a) in sub-clause (2) by –

- (i) deleting the words “from amongst the members appointed under paragraph (f)” appearing in paragraph (a);
- (ii) deleting the word “five” appearing in paragraph (f) and substituting therefor the word “two”;
- (iii) deleting sub-paragraphs (ii),(iii) and (v) appearing in paragraph (f); and
- (iv) inserting the following new paragraph immediately after paragraph (f) –

“(g) two persons appointed by the Cabinet Secretary through a transparent and formal process taking into consideration the regional and ethnic diversity of the people of Kenya.”

(b) in sub-clause (3) by deleting the word “Authority” and substituting therefor the word “Board.”

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, Clause 20 of the Bill be amended—

- (a) in sub-clause (3) by deleting the expression “(1) (b) to (d) and substituting therefor the expression “(1) (b), (c) and (d)”;
- (b) in sub-clause (4) by inserting the word “each” immediately before the words “submit three”;

(Hon. Tom Kajwang)

Debate arising;

Question put and agreed to;

Clause 20 - as amended agreed to

Clause 21 - agreed to

Clause 22 - amendment proposed –

THAT, Clause 22 of the Bill be amended –

(a) in sub-clause (1) by –

- (i) inserting the words “in engineering, accounting, law, survey or management” immediately after the words “degree” appearing in paragraph (a); and
 - (ii) deleting the words “the relevant field “appearing in paragraph (b) and substituting therefore the words “in engineering, accounting, law, survey or management”..
- (b) in sub-clause (2) by inserting the word “or” at the end of paragraph (d).
(c) by deleting sub-clause (3).

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, Clause 22 of the Bill be amended in sub-clause (1) by—

- (a) inserting the words “in engineering, survey, planning or management” immediately after the words “a degree” appearing in paragraph (a);
- (b) deleting the words “the relevant field” appearing in paragraph (b) and substituting therefor the words “engineering, survey, planning or management”;

(Hon. Tom Kajwang)

Debate arising;

Question put and negatived;

Clause 22 - as amended agreed to

Clauses 23, 24, 25 and 26 - agreed to

Clause 27 - amendment proposed –

THAT, Clause 27 of the Bill be amended —

- (a) in sub clause (1) by deleting the word “may” appearing immediately after the words “A Board” and substituting therefor the word “shall”
- (b) in sub clause (2) by deleting the word “may” appearing immediately after the words “The Board” at the beginning of the sub clause and substituting therefor the word “shall”;
- (c) by inserting the following new sub clause immediately after sub clause (2)—

(3) The Committee shall ensure that such relevant stakeholders and agencies are involved in the decisions of the Committee.

(Hon. John Muchiri)

Amendment dropped;

Clause 27 - agreed to

Clause 28 - agreed to

Clause 29 - amendment proposed -

THAT, Clause 29 of the Bill be amended by deleting sub-clause (4) and substituting therefor the following new sub-clause -

“(4) The Director-General shall be appointed for a term of four years and may be eligible for re-appointment for one further term of four years.”

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 29 - as amended agreed to

Clauses 30, 31, 32, 33, 34, 35, 36, 37 and 38 - agreed to

Clause 39 - amendment proposed -

THAT, Clause 39 of the Bill be amended —

- (a) in sub-clause (1) by deleting the word “may” and substituting therefor the word “shall”;
- (b) in sub-clause (2) by deleting the word “may” and substituting therefor the word “shall”;
- (c) in sub-clause (3) by inserting the words “in writing” immediately after the words “Cabinet Secretary nominate”

(Hon. Tom Kajwang)

Debate arising;

Question put and agreed to;

Clause 39 - as amended agreed to

Clauses 40, 41, 42 and 43 - agreed to.

Clause 45 - amendment proposed -

THAT, Clause 45 of the Bill be amended in sub-clause (3) by deleting the words “sixty” and substituting therefor the words “thirty”.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 45 - as amended agreed to

Clauses 46 and 47 - agreed to

Clause 48 - amendment proposed -

THAT, Clause 48 of the Bill be amended -

(a) by inserting the following new sub-clause immediately after sub-clause (1) -

“(1A) An Authority exercising its powers under sub-section (1) shall not be liable to payment of any levies and charges not imposed by the national government”; and

(b) in sub-clause (7) by deleting the words “adequately” and substituting therefor the words “may be adequate”.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Further amendment proposed -

THAT, Clause 48 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (6)—

(6A) For avoidance of doubt, nothing contained in this section shall absolve any Authority from liability to compensate owner or occupier of land just compensation or overt market value of any soil, clay, rock, gravel, murram, lime, sand, shale, shingle, slate, surface soil or any other material for the construction of any road.

(6B) Where the quantum of compensation made under sub-section (6A) is disputed either by the owner, occupier of land or the Authority, the parties may enter into mutual arbitration within sixty days of the dispute or in accordance with the law relating to Arbitration.

(6C) Despite the provisions of sub-section (6B), the Authority may in lieu of arbitration acquire such land compulsorily in accordance with the provisions of the Constitution and the Land Act, 2012.

(Hon. Tom Kajwang)

Debate arising;

Question put and negatived;

Clause 48 - as amended agreed to

Clauses 49, 50 and 51 - agreed to

Clause 52 - amendment proposed -

THAT, Clause 52 of the Bill be amended in sub-clause (4) by inserting the words “as prescribed by the Cabinet Secretary” at the end of paragraph (b).

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 52 - as amended agreed to

Clause 53 - amendment proposed –

THAT, Clause 53 of the Bill be amended in the opening sentence to sub-clause (2) by inserting the words “furniture” immediately after the words “road”.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 53 - as amended agreed to

Clause 54 - amendment proposed –

THAT, Clause 54 of the Bill be amended –

- (a) by re-numbering the existing Clause (1) as sub-clause (1);
- (b) in the proposed new sub-clause (1) by inserting the words “ bridge or tunnel” immediately after the words “national trunk road”; and
- (c) by inserting the following new sub-clause immediately after the proposed new sub-clause (1)–

“(2) Subject to sub-section (1), no free alternative shall be provided for any national toll road, bridge or tunnel.”

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 54 - as amended agreed to

Clause 55 - agreed to

Clause 56 - amendment proposed –

THAT, Clause 56 of the Bill be amended –

- (a) in sub-clause (2) by inserting the words “designing, constructing, operating” immediately before the words “maintaining” appearing in paragraph (a)”;
- (b) in sub-clause (4) –
 - (i) by deleting paragraph (f) and substituting therefor the following new paragraph –
 - “(f) the manner in which the proceeds of the charges shall be collected, administered and allocated;” and
 - (ii) by inserting the following new paragraphs immediately after paragraph (f)–

- “(fa) the collection of user related charges by a private party under a public private partnership arrangement; and
(fb) the remittance of all collected user charges in a manner prescribed by the Cabinet Secretary responsible for finance.”
- (c) by inserting the following new sub-clause immediately after sub-clause (4) –
“(5) Regulations made under sub-section (4) may prescribe a penalty in respect of any contravention of any provisions thereof.”

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

- Clause 56 - as amended agreed to
Clauses 57, 58 and 59 - agreed to.
Clause 60 - amendment proposed –

THAT, Clause 60 of the Bill be amended by inserting the words “regulations made by” immediately after the words “and”

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, Clause 60 of the Bill be amended by deleting the words “and National Treasury” and substituting therefor the words “and the Cabinet Secretary responsible for matters relating to the National Treasury”.

(Hon. Tom Kajwang)

Debate arising;

Question put and negatived;

- Clause 60 - as amended agreed to
Clauses 61, 62 and 63 - agreed to
Clause 64 - amendment proposed –

THAT, Clause 64 of the Bill be amended –

- (a) by re-numbering the existing Clause (1) as sub-clause (1);
(b) in the proposed new sub-clause (1) by inserting the words “and the state department responsible for infrastructure” immediately after the words “Kenya Roads Board”; and
(c) by inserting the following the new sub-clause immediately after sub-clause (1) –

“(2) The annual roads works programme under sub-section (1) shall not include roads developed or managed under a public private partnership agreement.”

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 64 - as amended agreed to

Clause 65 - amendment proposed –

THAT, Clause 65 of the Bill be amended in sub-clause (1) by inserting the words “including road projects intended to be developed through public private partnerships” immediately after the words “road investment program”.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 65 - as amended agreed to

Clause 66 - amendment proposed –

THAT, Clause 66 of the Bill be amended by deleting the word “the” and substituting therefor the word “sound”.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 66 - as amended agreed to

Clause 67 - amendment proposed –

THAT, Clause 67 be amended –

(a) by re-numbering the existing Clause (1) as sub-clause (1);

(b) by inserting the following new sub-clause immediately after the proposed new sub-clause (1) –

“(2) Despite sub-section (1), under a public private partnership arrangement, the terms of the project agreement shall prevail.”

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, Clause 67 of the Bill be amended by deleting the words “their” and substituting therefor the words “its”

(Hon. Tom Kajwang)

Debate arising;

Question put and agreed to.

Clause 67 - as amended agreed to

Clause 68 - amendment proposed –

THAT, Clause 68 of the Bill be amended by deleting the words “section 45” and substituting therefor the words “section 67”.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to.

Clause 68 - as amended agreed to

Clause 69 - amendment proposed –

THAT, Clause 69 of the Bill be amended by deleting the words “section 55” and substituting therefor the words “section 54”.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 69 - as amended agreed to.

Clause 70 - agreed to

Clause 71 - amendment proposed –

THAT, Clause 71 of the Bill be amended be by inserting the following new sub-clause immediately after sub-clause (3) –

“(3A) Despite sub-section (3), any agreement entered into by an Authority relating to programmes financed by the Fund shall be made in consultation with the Kenya Roads Board.”

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 71 - as amended agreed to

Clause 72 - amendment proposed –

THAT, Clause 72 of the Bill be amended by inserting the words “Subject to approval by the Cabinet Secretary” at the beginning of the Clause.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 72 - as amended agreed to

Clause 73 - amendment proposed –

THAT, Clause 73 of the Bill be amended in sub-clause (1) by inserting the words “Subject to approval by the Cabinet Secretary” at the beginning.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Further amendment proposed -

THAT, Clause 73 of the Bill be amended in sub-clause (2) by deleting the word “must” appearing in paragraph (a) and substituting therefor the word “shall.”

(Hon. Tom Kajwang)

Debate arising;

Question put and agreed to;

Clause 73 - as amended agreed to

Clause 74 - amendment proposed –

THAT, Clause 74 of the Bill be amended by deleting the words “relevant/respective” and substituting therefor the word “relevant”.

(Hon. Tom Kajwang)

Debate arising;

Question put and agreed to;

Clause 74 - as amended agreed to

Clause 75 - amendment proposed –

THAT, Clause 75 of the Bill be amended –

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause–

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(..)

(1) A county government shall obtain the respective Authority’s written approval if it intends to carry out road works on a county road or make changes to the management of a county road where the works or changes would—

- (i) require the carrying out of road works on a national trunk road;
- (ii) otherwise have a significant adverse impact on a national trunk road; or
- (iii) have a significant impact on the planning of a national trunk road or a future national trunk road.

(b) in sub-clause (9) by deleting the words “chief executive” and substituting therefor the words “Director General”.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 75 - as amended agreed to

Clause 76 - amendment proposed –

THAT, Clause 76 of the Bill be amended—

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—

(1)A county government may, in relation to a national trunk road traversing its area of jurisdiction, exercise all powers that it may exercise with respect to county roads within its area.

(b) by inserting the following new sub-clause immediately after sub-clause (1) —

(1A) Where a county government intends to exercise powers relating to a national trunk road within its area of jurisdiction, the county government shall notify the relevant Authority in writing of intended action or exercise of power including limit of such action or power and persons likely to incur liability for the action or use of such power.

(1B) Where a county government issues notice to the Authority of its intention to act upon a national trunk road within its area of jurisdiction, the Authority shall within a reasonable time, but in any case, a period not exceeding twenty-one days, give its consent or decline the request by giving reasons thereof in writing.

- (c) by deleting sub-clause (3);
- (d) by deleting sub-clause (4);
- (e) by deleting sub-clause (5);
- (f) by deleting sub-clause (6).

(Hon. Tom Kajwang)

Debate arising;

Question put and agreed to;

Clause 76 - as amended agreed to

Clause 77 - agreed to.

Clause 78 - amendment proposed –

THAT, Clause 78 of the Bill be amended –

- (a) in sub-clause (1) by inserting the words “or a private party under a public private partnership arrangement” immediately after the words “Authority’s”;
- (b) in sub-clause (2) by inserting the words “or a private party under a public private partnership arrangement” immediately after the words “Authority”;
- (c) in sub-clause (3) by inserting the words “or a private party under a public private partnership arrangement” immediately after the words “Authority”;
- (d) in sub-clause (4) by inserting the words “or a private party under a public private partnership arrangement” immediately after the words “Authority”; and
- (e) in sub-clause (5) by inserting the words “or a private party under a public private partnership arrangement” immediately after the words “Authority”.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 78 - as amended agreed to

Clause 79 - amendment proposed –

THAT, Clause 79 of the Bill be amended in the opening sentence to sub-clause (1) by inserting the word “furniture” immediately after the word “road”.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 79 - as amended agreed to

Clauses 80, 81, 82, 83, 84, 85, 86, 87, 88 and 89 - agreed to

Clause 90 - amendment proposed –

THAT, Clause 90 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph –

- (a) by affixing the notice in a conspicuous place at the office of the Director General; or

(Hon. Tom Kajwang)

Debate arising;

Question put and agreed to;

Clause 90 - as amended agreed to

Clauses 91, 92, 93, 94, 95, 96, 97, 98, 99 and 100 - agreed to

Clause 101 - amendment proposed -

THAT, Clause 101 of the Bill be amended by deleting the words “being either a department or division”.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 101 - as amended agreed to

Clause 102 - amendment proposed -

THAT, Clause 102 of the Bill be amended -

(a) in sub-clause (2) by -

- (i) deleting the word “and” appearing immediately after the words ‘Kenya National Highways Authority’; and
- (ii) inserting the words “ and the Kenya National Urban Roads Authority” at the end.

(c) in sub-clause (5) by deleting paragraph (d) and substituting therefor the following new paragraph -

“(d)the annual estimates of the former Kenya National Highways Authority, Kenya Urban Roads Authority and Kenya Rural Roads Authority for the financial year in which this Act commences shall be deemed to be the annual estimates of the Kenya National Highways Authority under this Act and the annual estimates of the former Kenya Urban Roads Authority shall be deemed to be the annual estimates of the Kenya National Urban Roads Authority and the annual estimates of the former Kenya Rural Roads Authority shall be deemed to be the annual estimates of the Kenya National Secondary Roads Authority for the remainder of that financial year.”

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Clause 102 - as amended agreed to

Clauses 103 and 104 - agreed to

First Schedule - amendment proposed -

THAT, the First Schedule of the Bill be amended -

(a) in Part A, by deleting the classification of Secondary National Trunk Roads and substituting therefor the following new classification -

Secondary National Trunk Roads	Class C	Roads forming important regional routes, linking County headquarters or other regionally important centers, constituency headquarters, Municipal or Town Council Centres and other towns to each other and to Class A, B, H or J roads. Required to collect regional and local traffic and channel it to class A, B, H and J roads; and
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(b) in Part B, by inserting the following new classification at the beginning -

Class D	Roads meant to collect traffic from lower class roads and channel it to the higher class roads. They are required to provide lower level of services than arterial roads at lower permissible speed over shorter distances with limited access control meant to collect traffic from lower roads and connect it with Class C roads.
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(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Further amendment proposed -

THAT, the First Schedule of the Bill be amended -

(c) in Part A, by deleting the classification of Secodary National Trunk Roads and substituting therefor the following new classification -

Secondary National Trunk Roads	Class C	Roads forming important regional routes, linking County headquarters or other regionally important centers, constituency headquarters, Municipal or Town Council Centres and other towns to each other and to Class A, B, H or J roads. Required to collect regional and local traffic and channel it to class A, B, H and J roads; and
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Proposed amendment withdrawn by the mover;

First Schedule - as amended agreed to

Second Schedule - agreed to

Third Schedule - amendment proposed -

THAT, the Third Schedule to the Bill be amended in the proposed amendment to section 6(2)(d) of the Kenya Roads Board Act No. 7 of 1999,as follows -

- (a) in paragraph (2) by deleting the words “Thirty (30%)” and substituting therefor the words “twenty eight (28%);
- (b) by deleting paragraph (4) and substituting therefor the following new paragraph -
“4) Sixteen (16%) per centum is allocated to the county governments equally as conditional grants in respect of county roads;”and
- (c) in paragraph (6) by -
 - (i) deleting the words “six (6) per centum” and substituting therefor the words “seven (7%) per centum; and
 - (ii) inserting the words “and training” immediately after the word “development” appearing in sub-paragraph (a).

THAT, the Third Schedule to the Bill be amended in the proposed amendments to section 6(2)(1) of the Kenya Roads Board Act No. 7 of 1999 by inserting the following new paragraph immediately after paragraph (k) -

“(ka) every five years conduct an inventory and condition survey of all public rods and submit copies of the report to the Cabinet Secretary and the National Assembly for consideration.”

THAT, the Third Schedule to the Bill be amended by inserting the following new amendment immediately after the proposed amendment to section 17A of the Kenya Roads Board Act No. 7 of 1999 -

Insert the following -

- s.30 “(1) The Board may withhold funds of any road agency or county government that fails to comply with the public roads standards prescribed by the Cabinet Secretary.”

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Further amendment proposed -

THAT, the third schedule be amended by inserting the following row immediately after the proposed amendment to section 6(2) of the Kenya Roads Board Act No.7 of 1999 —

- s.12 Delete and substitute therefor with the following —

“(2) A person shall be qualified for appointment as the Executive Director if that person-

- (a) holds a Master’s degree in finance, accounting, law or engineering from a university recognized in Kenya;
- (b) has knowledge and at least ten years’ experience in a relevant

- field; has served in a senior management position for a period of at least five years; and
- (c) satisfies the requirements of Chapter Six of the Constitution”

(The Leader of the Majority Party)

Debate arising;

Amendment to the further amendment proposed –

THAT, the proposed amendment be amended in paragraph (a) by deleting the word “Master’s” appearing immediately after the word “degree”

(The Leader of the Majority Party)

Debate arising;

Question of the amendment to the further amendment put and agreed to;

Debate of the further amendment as further amended arising;

Question put and agreed to;

Third Schedule - as amended agreed to

NEW CLAUSES -

New Clause 11A proposed –

THAT, the Bill is amended by inserting the following new Part immediately after section 11 –

Registration of private roads

11A. (1) A person who intends to construct a private road shall apply to the Cabinet Secretary for registration of the road.

(2) An application under subsection (1) shall-

- (a) Indicate the function to be served by the road;
- (b) Indicate the class of road to be constructed in accordance with the First Schedule to this Act;
- (c) Be accompanied by the construction plans;
- (d) Be accompanied by the prescribed fee; and
- (e) Contain any other information that may be prescribed by the Cabinet Secretary.

(3) If the applicant meets the prescribed requirements, the Cabinet Secretary shall approve the construction of the road.

(4) Upon completion of the road construction and inspection of the road by the Cabinet Secretary, the Cabinet Secretary shall register the road and publish such registration in the Gazette.

Inspection of private roads

11B. The Cabinet Secretary may, from time to time, inspect a private road to ensure that the prescribed standards are complied with.

(Hon. (Dr.) Patrick Musimba)

Motion made and Question proposed -

THAT, the New Clause 11A be read a Second Time

Debate arising;

Question put and negatived;

New Clause 11B proposed -

THAT, the Bill is amended by inserting the following new Part immediately after section 11-

Inspection
of private
roads

11B. The Cabinet Secretary may, from time to time, inspect a private road to ensure that the prescribed standards are complied with.

(Hon. (Dr.) Patrick Musimba)

Proposed amendment withdrawn.

Clause 2 - amendment proposed -

THAT, Clause 2 of the Bill be amended -

- (a) by deleting the definition of the words “county roads agency” and substituting therefor the following new definition -

“county roads agency” means a roads agency established by a county government which shall be responsible for the management, development and maintenance of a county road.”; and

- (b) in the definition of the words “Road Fund” by deleting the word “Road”.

(Chairperson of the Departmental Committee on Transport, Public Works and Housing)

Debate arising;

Question put and agreed to;

Further amendment proposed -

THAT, Clause 2 of the Bill be amended by inserting the following new definition in their proper alphabetical sequence—

- (a) “city” means an area conferred with the status of a city under section 8 of the Urban Areas and Cities Act No. 13 of 2011;”
 (b) “owner” means a person registered as a legal owner of land under the relevant written laws;”

(Hon. Tom Kajwang)

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, Clause 2 of the Bill is amended by inserting the following new definition in the proper alphabetical sequence-

“private road” means a road that is constructed by any person other than the Government on a privately owned land, which is open for use by members of the public at a fee.

(Hon. (Dr.) Patrick Musimba)

Proposed amendment withdrawn;

Clause 2 - as amended agreed to

Long Title - amendment proposed –

THAT, the long title of the Bill is amended by deleting the word “public”.

(Hon. (Dr) Patrick Musimba)

Proposed amendment withdrawn.

Long Title - agreed to

Title - agreed to

Clause 1 - agreed to

Bill to be reported with amendments.

16. HOUSE RESUMED - the Deputy Speaker in the Chair

17. THE KENYA ROADS BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2017)

Bill reported with amendments;

Motion made and Question proposed –

THAT, the House do agree with the Committee said report.

And the time being three minutes past Seven O’clock, the Deputy Speaker interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

18. HOUSE ROSE - at three minutes minutes past Seven O’clock

M E M O R A N D U M

The Speaker will take the Chair on
Thursday, April 19, 2018 at 2.30 p.m.