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EXAMPLES OF LEGISLATION ESTABLISHING AN AUTONOMOUS ROAD AUTHORITY
(Compiled by Ian G. Heggie, revised March 1999)

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EXAMPLES OF LEGISLATION ESTABLISHING AN AUTONOMOUS HIGHWAY AUTHORITY

1. ISSUES WHICH NEED TO BE DECIDED BEFORE YOU CAN DRAFT LEGISLATION TO ESTABLISH AN AUTONOMOUS HIGHWAY AUTHORITY

The following check list indicates the issues where clear guidance needs to be given to the legislative draftmen before they can start preparing legislation. Once the government has decided how it wishes to deal with these issues, legislation can either be prepared de novo, or one of the attached examples of legislation can be amended to suit.

PART I: REGULATION OF ROADS AND ROAD TRAFFIC

This section would cover:

(i) Clear assignment of responsibility for road policy and regulation of road traffic to a single central government ministry.

(ii) Procedures for designating roads and assigning them to a legally constituted highway authority.

(iii) Provisions for road safety and the role of any Road Safety Board (or equivalent).

(iv) Procedures for regulation of road transport services.

(v) Assignment of responsibility for regulation of urban bus and taxi services, and the general framework for their regulation.

(vi) Role of the Road Traffic Commissioner (or equivalent) and penalties for contravening the regulations (including penalties for overloading).

(vii) Arrangements for dealing with unremunerative “social” services in both urban and rural areas, including how decisions are to be taken on the need for such services and how they are to be financed.

PART II: ESTABLISHMENT OF THE HIGHWAYS CORPORATION

Agreement needs to be reached on the following issues:

(i) That there be established an autonomous Highways Corporation under commercial law.

(ii) That the new Corporation be invited to take on as many professional staff from the existing Roads Department as possible (it is desirable to avoid forcing them to take on some or all existing staff).

(iii) That professional staff not accommodated through the above arrangement be retained by the existing ministry.
(iv) That all Roads Department staff, including the professional staff not taken on by the Corporation, be encouraged to become small-scale consultants or contractors and receive training and other forms of assistance to help make that possible.

(v) That all remaining Roads Department staff be absorbed by the ministry or offered redundancy packages.

(vi) That the role of the Corporation would be to:

- take over responsibility for managing all designated roads in the country;
- act as advisers to district councils to enable them to plan and manage their road networks using local consultants and contractors (or whatever other arrangements appear practicable);
- assist Village Development Committees to manage the undesignated network of roads, tracks and trails in rural areas;
- carry out as much of its work as possible using local consultants and contractors;
- negotiate concession agreements with the private sector to enable them to finance, build and operate selected roads as toll roads;

(vii) That the Corporation be managed by a National Roads Board which would be constituted as the management board of the Corporation.

(viii) That the Board have general control of the management, property and funds of the Corporation and have powers to sign contracts on behalf of the Corporation.

(ix) That the Board shall, for purposes of discharging its duties, delegate day-to-day management to a Chief Executive who would be a member of the Board and designated as Managing Director.

(x) That the Board of the Corporation be under the jurisdiction of the transport ministry (or other concerned central government ministry).

(xi) That this ministry set the overall policy framework for the Corporation through an annual contract plan which would be based on the Corporation’s rolling three-year business plan.

(xii) That all maintenance and road safety activities undertaken and supported by the Corporation be financed through the road fund (or other designated source of finance -- see Part III).

(xiii) That capital works like road rehabilitation (including counterpart funding of donor financed programs), upgrading and new works would be financed from a combination of borrowing, grants from the government’s development budget, and internally generated funds.

(xiv) That the capital works financed from internally generated funds be zero for the first five years and be agreed on an annual basis thereafter as part of a framework agreement between the Corporation and the Ministry of Finance (see Part III).

(xv) That there be two Deputy Chief Executives, one dealing with road network management and the other with finance.
(xvi) That the Chief Executive and Deputy Chief Executives be appointed by the Minister on the advice of the Board.

(xvii) That the Chief Executive be assisted by up to (five) Directors who would be appointed by the Board and whose duties would be assigned by the Chief Executive in consultation with the Board.

(xviii) That the Corporation engage such employees as the Board may decide on terms and conditions of service which shall be comparable with best practice in other similar organizations.

(xix) That, with the approval of the Minister (of Finance), the Corporation be entitled to borrow funds from any financial institution and also invest surplus funds in short term securities.

(xx) That the Corporation adopt commercial accounting systems.

(xxi) That the books and accounts and other records be audited by independent auditors whose appointment shall be approved by the Auditor General.

(xxii) That the Corporation publish an annual report to a format to be agreed by the Minister.

(xxiii) That any land and other property surplus to the Corporation’s needs be returned to the Government for re-use and reassignment for other purposes.

PART III: ROAD FUND

Agreement needs to be reached on the following issues:

(i) That there be a road fund established through legislation.

(ii) That the road fund be managed by a separate road fund administration with its own board, or at least be managed through a sub-committee of the Corporation’s main Board (see separate K-base on Road Financing and Road Funds).

(iii) That the road fund Board (or finance sub-committee) be chaired by an independent chairman.

(iv) That the source of funds be vehicle license fees (including any heavy vehicle fees introduced by the Board), a road maintenance levy added to the price of fuel, international transit fees, fines for overloading, and any other sums of money determined by Parliament.

(v) That the diesel levy be replaced as soon as practicable by weight-distance fees administered through sealed hub odometers.

(vi) That the level of the heavy vehicle license fees and the road maintenance levy be determined by the Board (or by the Board of the Corporation, on the advice of the finance sub-committee), and within an annual framework agreement between the Board and the Ministry of Finance.

(vii) That the above charges (designated the road tariff) be directly deposited into the road fund.

(viii) That the road fund Board may enter into agreements to have some, or all parts of the road tariff collected under contract.
(ix) That the road fund bank accounts be held either at the Central Bank or at one or more commercial banks.

(x) That there be an Executive Secretary of the road fund appointed by the Board with up to (5 to 30 staff, depending on the size of the fund).

(xi) That payments from the road fund only be made for items forming part of an approved road program, following certification that the work had been carried out according to specification.

(xii) That allocations of funds between different types of road (main, urban, rural, unproclaimed, etc) be done according to transparent procedures to be published by the Board.

(x) That there be a separate audit of the road fund and the auditors report on the audit be submitted to Parliament and published in the press.

PART IV: UNDESIGNATED

(i) That government accepts the need to bring as many roads as possible under regular maintenance, even though they may be unproclaimed.

(ii) That the road fund or Corporation be responsible for encouraging villages to form themselves into Village Development Committees or local Roads Boards for purposes of participating in maintenance and improvement of the unproclaimed network.

(iii) That funds for maintenance be provided from the road fund and those for improvement from the government’s development budget.

(iv) That the above funds be provided on a cost-sharing basis for labor-based road works under arrangements to be published by the Board.

(v) That the road fund or Corporation arranges training in labor-based road works for persons designated by the local villages.

(vi) That the road fund introduces arrangements to ensure that local road works are carried out to an appropriate standard and that all funds provided through the road fund are properly accounted for.
2. **GHANA: A BILL ENTITLED THE GHANA HIGHWAY AUTHORITY ACT, 1996**

AN ACT to re-enact the Ghana Highway Authority Decree 1974 (NRCD 298) to ensure effective and efficient management of trunk roads; to bring the provisions in respect of the Authority in conformity with the Constitution; and to provide for matters relating to these.

BE IT ENACTED by Parliament as follows

PART I - GHANA HIGHWAY AUTHORITY CONTINUED IN EXISTENCE

Continued existence of Ghana Highway Authority

1. (1) The Ghana Highway Authority established under the Ghana Highway Authority Decree 1974 (NRCD 298) and in existence immediately before the coming into force of this Act is by this Act continued in existence as a body corporate subject to the provisions of this Act.

(2) The Ghana Highway Authority referred to in this Act as "the Authority" shall continue to have perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) The Authority may for the discharge of its functions acquire and hold any movable or immovable property and enter into any contract or other transaction.

(4) Where the Authority decides and the Government agrees that an acquisition of land or a right over land is necessary, the land may be acquired under the State Property and Contracts Act, 1960 (C.A.6) or the State Lands Act 1962 (Act 125) for the purpose of this Act.

Object of Authority

2. The Authority shall subject to the policies of the ministry be responsible for the administration, control, development and maintenance of trunk roads and related facilities.
Functions of Authority

3. (1) For the purpose of section 2 of this Act, the Authority shall -

(a) plan, develop, maintain, protect and administer trunk roads and related road works;

(b) control vehicle usage on trunk roads with the aim of providing safe and adequate infrastructure for road transportation commensurate with the economic development of the country;

(c) classify and lay down design standards on the different classes of trunk roads;

(d) undertake research or collaborate with any research Organization with a view to facilitating the Authority’s planning, development and maintenance activities;

(e) maintain and preserve such records relating to its functions as it considers expedient;

(f) maintain and update a list of designated trunk roads;

(g) carry out, on a permanent basis, such necessary engineering traffic and economic studies as it may consider necessary for the maintenance and improvement of the trunk road network;

(i) implement a maintenance management system for planning, organizing, directing and controlling routine and periodic maintenance activities performed by employees of the Authority or through independent contractors;

(j) carry out either by its employees or through contractors with qualified consultants, location and design studies (including right-of-way and borrow pit requirements) necessary for programmed trunk road improvement or rehabilitation projects and prepare corresponding construction plans, specifications, cost estimates and other documents required for proper tendering of the programmed works;

(k) subject to existing enactments, tender, let and administer contracts for trunk road improvement and rehabilitation project and for trunk road maintenance activities for which contracting is considered by the Authority to be cost effective or otherwise advantageous;

(l) negotiate concession agreements with private sector entities to enable them finance, build and operate selected trunk roads as toll roads under conditions to be agreed with the Ministry;

(m) carry out, either through its employees or through independent contractors, the necessary routine periodic and emergency road maintenance activities in
accordance with the service level of maintenance established for each class or type of trunk road;

(n) keep adequate records and operate a management information system which provides the managers with timely and accurate information on commitments and expenditure for works and services for which the managers are responsible;

(o) carry out a comprehensive continuing programme of professional staff development and appropriate skills training for non-professional staff; and

(p) carry out such other objectives as appear to the Authority to be conducive or incidental to the attainment of its object under section 2 of this Act.

(2) The Minister may give to the Board established under section 5 of this Act such directions of a general character as to the discharge of the responsibilities of Authority as appear to him to be required in the public interest and the Board shall ensure that effect is given to the directions.

Decentralization of functions to District Assemblies

4. (1) The Authority may with the approval of the Minister in writing delegate to a District Assembly or any competent body or person the control, maintenance and protection of a trunk road but no delegation shall be made to a District Assembly without previous consultation with the Minister responsible for Local Government and Rural Development.

(2) The ancillary functions of the Authority may be delegated under sub-section (1) but these shall be specifically stated in the document delegating the power of the Authority.

Governing body of Authority

5. (1) The governing body of the Authority shall be a Board of Directors referred to in this Act as "the Board".

(2) The Board shall consist of -

(a) a chairman;

(b) a representative of each of the following Ministries nominated by the Minister responsible for the Ministry not being an officer below the rank of Director or its equivalent -

(i) the Ministry responsible for Roads and Highways
(ii) the Ministry responsible for Transport;
(iii) the Ministry responsible for Finance
(iv) the Ministry responsible for Environment Science Technology;
(v) the Ministry responsible the Interior;

(c) the Chief Executive of the Authority appointed under section 18;

(d) a representative of the Private Enterprise Foundation

(e) a civil engineer from the private sector who is a member of the Ghana Association of Consultants, nominated by the Council of that Association;

(f) a representative of the Ghana Private Road Transport Union nominated by the Union; and

(g) one other person representing road users nominated by the Minister responsible for Roads and Highways.

(3) The members of the Board shall be appointed by the President acting in consultation with the Council of State.

(4) The Board shall be responsible for securing the effective implementation of the functions of the Authority.

Tenure of office of members

6. (1) A member of the board other than an ex officio member shall hold office for a period not exceeding three years and shall on the expiration of that period be eligible for reappointment.

(2) A member of the Board other than an ex officio member may at any time by letter addressed to the President through the Minister, resign his office.

(3) A member who is absent from three consecutive meetings of the Board without sufficient cause shall cease to be a member.

(4) The Chairman or a member of the Board may be removed from office by the President for inability to perform the functions of his office, for stated misbehaviour or for any other just cause.

(5) The Chairman of the Board shall through the Minister notify the President of vacancies that occur in the membership of the Board within one month of the occurrence of the vacancy.

Allowances for Members

7. The Chairman and the other members of the Board shall be paid such allowances as the Minister, in consultation with the Minister responsible for Finance may determine.
Meetings of the Board

8. (1) The Board shall meet for the despatch of business at such times and in such places as the Chairman may determine but shall meet at least once every three months.

(2) The Chairman shall upon the request of not less than one-third of the membership of the Board convene a special meeting of the Board.

(3) The quorum at a meeting of the Board shall be five members and shall include the Chief Executive or the person acting in that capacity.

(4) Every meeting of the Board shall be presided over by the Chairman and in his absence by a member of the Board elected by the members present from among their number.

(5) Questions before the Board shall be decided by a majority of the members present and voting.

(6) The Chairman or the person presiding at a meeting of the Board shall in the event of equality of votes have a second or casting vote.

(7) The Board may co-opt any person to act as an adviser at its meetings but not co-opted person is entitled to vote at the meeting.

(8) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.

(9) Except as otherwise expressly provided for under this section, the Board shall determine and regulate the procedure for its meetings.

Disclosure of interest

9. (1) A member of the Board who is directly interested in any matter being considered or dealt with by the Board shall disclose the nature of his interest at a meeting of the board and shall not take part in any deliberation or decision of the Board with respect to the matter.

(2) A member who fails to disclose his interest under subsection (2) of this section shall be removed from the Board.

Committees of the Board

10. The Board may for the discharge of the functions of the Authority appoint committees of the Board comprising members of the Board or non-members or both and assign to any such committee...
such functions of the Authority as the Board may determine except that a committee composed exclusively of non-members of the Board may only advise the Board.

PART II - MANAGEMENT OF TRUNK ROADS BY THE AUTHORITY

Traffic control devices

11. (1) The Authority may cause traffic control devices to be erected, placed or maintained on, over, under or near any trunk road and related facilities for the guidance of drivers of vehicles and other users of the trunk road or related facility, and may remove or alter the devices as it considers necessary.

(2) The devices shall conform to international requirements and in the absence of any requirement shall be of such size, colour and type as may be prescribed by regulations made under section 41 of this Act.

(3) Where there is a traffic control device or object on any land which resembles a traffic control device in use by the Authority, the Authority may in writing require the owner or occupier of the land to remove the object or device.

(4) The Authority may effect the removal of the object or device if the owner or occupier fails to comply with the notice and shall cause as little damage as possible and recover as a debt any expense incurred from the defaulting @l--

Control of vehicular traffic on bridges.

12. The Authority may cause to be placed in conspicuous place on or near any bridge on a trunk road a notice to the effect that -

(a) the bridge cannot carry more than a certain weight;

(b) a vehicle exceeding a certain breadth or height cannot be safely driven on or over the bridge; and any person who fails to comply with the notice commits an offence and is liable on conviction to a fine not exceeding @500,000 or to a term of imprisonment not exceeding three months or to both.

Closure of road

13. (1) The Authority or any person authorized by it may by notice displayed on, over or adjacent to a trunk road and related facility restrict or prohibit the use of the trunk road or related facility if it is in the interest of the public to do so.
(2) The notice shall contain such information as may be necessary in respect of alternative route or arrangement.

(3) Any person who uses a trunk road or related facility contrary to subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding $500,000 or to a term of imprisonment not exceeding three months or to both.

Construction of bridge

14. (1) No person shall construct any bridge or crossing over public water or an open sewer contiguous to a trunk road without the written permission of the Authority.

(2) The Authority may construct a bridge or other means of crossing at the request of any person upon the payment in advance of the expenses estimated by the Authority.

(3) Any person who constructs a bridge or crossing contrary to subsection 91) commits an offence and is liable on conviction to a fine not exceeding 2 million or a term of imprisonment not exceeding twelve months or to both.

(4) The Authority may remove any bridge or crossing constructed in contravention of this section; repair any damage caused in the process and shall recover the expenses for the removal as a debt due from the offender to the Authority.

Excavation in trunk road

15. (1) No person shall without the written permission of the Authority -

(a) make any excavation in a trunk road; or

(b) construct access road to link a trunk road.

(2) Where a person makes any excavation in a trunk road he shall -

(a) have it adequately fenced at his own expense;

(b) maintain sufficient light on or near it every night from sunset to sunrise; and

(c) fill up the excavation and restore the surface of the trunk road to the satisfaction of the Authority as soon as possible after completing the work within such time as the Authority may specify.

(3) Any person who contravenes subsections (1) or (2) of this section commits an offence and is liable to a fine not exceeding $500,000 or a term of imprisonment not exceeding three months or to both and the Authority shall immediately fill the
excavation and recover the expenses as a debt due from the offender to the Authority.

(4) Where the Authority excavates a trunk road or delegates the excavation, the Authority or its agent shall -

(a)  have the excavation adequately fenced;

(b)  maintain sufficient light on or near it every night from sunset to sunrise; and

(c)  fill up the excavation and restore the surface as soon as possible after completing the work for which the excavation was required.

Collection of tolls

16.  (1) The Authority shall collect tolls on any trunk road and related facilities with the approval of the Cabinet.

(2) Notwithstanding subsection (1) of this section the Authority may, subject to Cabinet approval, contract with any commercial body for the management of toll roads, bridges and ferries owned by it or under its control upon such terms and conditions as shall be agreed upon between the Authority and the body concerned.

(3) The Authority shall pay into the Road Fund established under the Road Fund Act 1996 (Act....) toll money collected from any trunk road, financed by Government subvention after deduction of administrative expenses agreed between the Government and the Authority.

Enforcement notice

17.  (1) The Minister may by notice require any person or Organisation engaged in an undertaking likely to have an adverse effect on a public road to submit: details of the undertaking to the Ministry.

(2) The details shall be submitted within such period as shall be specified in the notice.

(3) Where it appeals to the Minister that the undertaking poses a serious threat to the condition of a public road, the Minister may serve on the person responsible for the undertaking an enforcement notice requiring the person to take such steps as the Minister

(4) The enforcement notice shall specify -
(a) the offending activity; and

(b) the steps required to be taken; and

(c) the time within which the steps shall be taken; or

(d) that the offending activity shall cease.

(5) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding @2,000,000 or to a term of imprisonment not exceeding one year or to both.

(6) A court convicting a person under this section may in addition order the person to pay an amount equal to the value of the damage caused to the Authority and the amount shall be recoverable as a debt.

(7) Where a person fails to comply with the directives in the notice within the stipulated time or within such further period as the Authority may grant-, the Authority may take such steps as it considers appropriate notwithstanding the criminal liability in sub-section (5).

(8) Any person who hinders or obstructs a person acting within his authority under this section commits an offence and is liable on conviction to a fine not exceeding @500,000 or to imprisonment for a term not exceeding three months or to both.

(9) The Authority or its agent may recover as a debt from the person responsible any amount reasonably incurred to prevent or stop an offending activity under an enforcement notice.
PART III- ADMINISTRATION AND FINANCIAL PROVISIONS

Appointment of Chief Executive

18. (1) There shall be appointed for Authority a Chief Executive who shall be responsible for the day-to-day business of the Authority, for the implementation of the decisions of Board and for the effective and efficient administration and organisation of the Authority.

(2) The Chief Executive shall be appointed by the President in accordance with the advice of the Board given in consultation with the Public Services Commission and shall hold office on such terms and conditions as shall be specified in his letter of appointment.

(3) The Chief Executive shall be a civil engineer and member of a recognised professional institution or association.

Functions the Chief Executive

19. (1) The Chief Executive shall in the discharge of his functions -

(a) sign any contract for or on behalf of the Authority;

(b) collect any monies due to the Authority budgetary allocations and discharge the debts owed by the Authority;

(c) sign, accept, negotiate, endorse and receive any negotiable instrument on behalf of the Authority;

(d) open and operate current accounts, deposit or credit accounts on behalf of the Authority;

(e) negotiate and obtain loans on behalf of the Authority; and

(f) perform such other functions as the Board may direct.

(2) The functions specified in subsection (1) shall be performed subject to the approval and direction of the Board.

Delegation by Chief Executive.
20. The Chief Executive may delegate any of his functions to an employee of the Authority subject to any conditions that he may impose but he shall not be relieved from ultimate responsibility for the discharge of the delegated function.

Departments and division of the Authority

21. (1) For the purposes of the effective implementation of the functions of the Authority, the Board may divide the Authority into such departments and divisions as it shall determine.

(2) Each department or division shall consist of such staff as the Board shall determine.

(3) There shall be appointed for each department or division established under this section a head who shall be designated as a deputy chief executive or director respectively.

(4) The functions of the departments and divisions shall be such as shall be determined by the Board.

Secretary

22. The Authority shall have an officer to be designated as secretary to the Board who shall be the Director of Legal services and shall perform such functions as the Board or the Chief Executive may direct.

Internal Auditor

23. (1) There shall be appointed for the Authority an internal auditor who shall be responsible to the Chief Executive in the performance of his duties.

(2) The Internal Auditor shall prepare reports at such intervals as he considers necessary and submit the reports to the Chief executive but the Internal auditor shall submit quarterly reports through the Chief Executive to the Board.

(3) The Internal Auditor shall prepare, within three months of the end of each financial year, a report on the accounts of the Authority for that year and submit the report to the Chief Executive who shall submit the report to the Auditor-General.

Appointment of other officers and employees

24. (1) The Authority shall have such other officers and employees as may be necessary for the proper and effective performance of its functions.

(2) The President may in accordance with the advice of the Board given in consultation with the Public Services Commission and on such terms and conditions as may be determined appoint the officers and employees of the Authority.
(3) The President may in accordance with article 195 (2) of the Constitution delegate his power of appointment of public officers under this Part.

(4) The Board may engage the services of such consultants and advisers as it may on the recommendation of the Chief Executive determine.

(5) other public officers may be transferred or seconded to the Authority or may otherwise give assistance to it and shall be subject to the disciplinary rules of the Authority.

Funds of the Authority

25. The funds of the Authority shall include -

(a) monies provided to the Authority by Parliament for the discharge of its functions;
(b) any loans granted to the Authority by Government or obtained from any other source;
(c) monies accruing to the Authority by way of revenue; and
(d) monies transferred to the Authority by the Road Fund Board.

Borrowing powers

26. (1) The Authority may obtain loans, and other credit facilities from such financial institutions as the Minster in consultation with the Minister responsible for Finance may determine.

(2) The Authority may borrow temporarily by way of over-draft or otherwise such sums as it may require to meet its current obligations or discharge its functions under this Act.

(3) The Authority may make such investments as the Board considers necessary.

(4) The Minister responsible for Finance may on behalf of the Government guarantee the performance of any obligation of the Authority under this section.

(5) The Minister may prescribe the maximum sums which the Authority may borrow under this section.

Execution of contracts

27. (1) The use of the seal of the Authority shall be authenticated by two signatures being that of

(a) the Chief Executive or another member of the Board authorised by the Board to authenticate the use of the seal; and
(b) the Secretary or another officer of the Authority authorised by the Board to act in place of the Secretary for that purpose.

(2) The Authority may under its common seal empower any person to act as its attorney to execute deeds on its behalf in any place not situated in Ghana and every deed signed by the attorney on behalf of the Authority and under his seal shall be binding on the Authority and have the same effect as if it were under the common seal of the Authority.

(3) Any instrument or contract which if executed or entered into by a person other than a body corporate would not require to be under seal, may be executed or entered into on behalf of the Authority by the Chief Executive or any member of the Board if the person has previously been authorized by a resolution of the Board to execute or enter into that particular instrument or contract but the Authority may under its common seal appoint any person outside the country as an agent to execute or enter into an instrument or contract which shall take effect as if duly executed or entered into.

(4) The provisions of this section shall be subject to section 12 of the Contracts Act, 1960 (Act 25).

Annual budget of Authority

28. (1) The Authority shall, not later than six months before the end of each financial year, cause to be prepared and submitted to the Minister for the approval of Parliament, an annual budget in respect of the ensuing financial year comprising estimates of expected recurrent, maintenance, development and capital expenditure of the Authority in that financial year.

(2) The budget plan shall be in such form as the Minister for Finance may approve.

(3) After the budget has been approved by the Government, the Government shall release monies to the Authority as follows -

(a) monies approved in respect of recurrent expenditure shall be released quarterly, in advance;

(b) monies approved in respect of development expenditure shall be released on presentation by the Authority of valid certificates; and

(c) monies approved in respect of capital expenditure shall be released on presentation by the Authority of evidence of commitments for purchases.

Expenditure outside budget to be funded by requesting agency

29. Where the Authority is requested to carry out any development or expenditure outside the budget by any person, body or agency the money for the development or expenditure shall be provided by the person, body or agency.
Use of government revolving fund

30. The Authority may use the Government revolving fund facilities to grant advances on contracts and to indent unallocated stores.

Accounts and audit

31. (1) The Authority shall keep books of account and proper records in relation to them, the books of account and records shall be in such form as the Auditor-General may approve.

(2) The books of account of the Authority shall be audited by the Auditor-General or by an auditor appointed by him within six months after the end of each financial year.

Financial year

32. The financial year of the Authority shall be the same as the financial year of the Government.

Exemption from taxes and duties

33. The Authority shall be exempted from such taxes and duties as the Minister responsible for the Finance may, with the approval of Parliament direct.

Annual report

34. (1) The Board shall submit to the Minister as soon as practicable and in any event not more than six months after the end of each financial year a report dealing generally with the activities and operation of the Authority during the year to which the report relates and shall include -

   (a) the audited accounts of the Authority, the Fund and the Auditor-General's report on the accounts and the Fund;

   (b) a statement of the Authority's budget and operational plans for the next financial year; and

   (c) such other information as the Board may consider necessary.

(2) The Minister shall within two months after the receipt of the annual report submit the report to Parliament with such statement as he considers necessary.

Road inspector
35. (1) The President shall in accordance with the advice of the [board given in consultation with the Public Services Commission and on such terms and conditions as may be determined appoint road inspectors referred to in this Act as “inspectors”.

(2) The President may in accordance with article 195 (2) of the constitution delegate his power of appointment of the inspectors.

(3) An inspector or any person authorised by the Minister may at any reasonable time by himself or with the assistance of the police enter a public road to ensure compliance with this Act and the inspector or authorised person shall produce identification on demand.

(4) Inspectors in conjunction with law.

Enforcement agencies may from time to time mount exercises to apprehend persons not complying with this Act and the regulations made under it.

PART IV - MISCELLANEOUS PROVISIONS

Powers of entry and performance of other works

36. An authorised person in the discharge of any of his functions under this Act may, after reasonable notice -

(a) enter, inspect and survey any land or premises;

(b) excavate the subsoil and open, construct or repair any road, tunnel, sewer, drain or other works relating to a trunk road;

(c) specify levels, boundaries and lines by placing marks and digging trenches;

(d) remove or cut branches of any tree or underwood;

(e) with the prior approval of the Minister alter the course of any river, stream or watercourse for the purpose of constructing and maintaining any trunk road;

(f) stop, divert, widen or narrow temporarily or permanently, the course of any river, stream or watercourse or any road, street, way, bridge or ferry or raise or sink their level;

(g) take, haul and use any earth, stone, gravel, sand or timber or any other material or thing out of any land contiguous to any road camp which may be necessary for making, maintaining, altering, repairing or for the use of the road; bridge, ferry or road camp;
(h) exercise any right of way or entry already acquired or paid for and demolish any encroachments, crops or structures without payment of any further compensation except as provided by the Lands (Statutory Wayleaves) Act, 1963 (Act 186);

Compensation

37. (1) The Authority shall pay compensation or any damage done to any property by an authorised person under section 36.

(2) Where there is any dispute about the amount of compensation to be paid it may be settled by arbitration in accordance with the Arbitration Act 1961 (Act 38).

Restriction of execution

38. In any action or suit against the Authority, no execution or attachment or process shall be issued against the Authority, but any sums of money which may be awarded by judgement of the Court against the Authority shall be paid by the Authority from its funds.

Stay of arrest in certain cases

39. A person connected directly with the work of the Authority shall not be arrested and removed if his immediate removal might result in danger to life or goods, until the head of the department in which he is employed or the officer immediately in charge of the work in which the person is engaged has been given an opportunity to provide a substitute.

Protection of officers

40. Subject to the Constitution, no matter or Thing done by an officer or employee of the Authority shall, where the matter or thing is done bona fide for the purpose of executing any provisions of this Act render the officer or employee or any person acting by his directions personally liable to any civil liability.

Regulations

41. (1) The Minister may on the recommendation of the Board by legislative instrument, make regulations relating to trunk roads generally and for giving effect to this Act.

(2) Without prejudice to subsection (1) of this section regulations may provide for -

(a) the use, safety or maintenance of trunk roads;

(b) the erection of structures on or near, over, or under trunk roads;
(c) the designation of streets as shopping streets or business streets and prescribing special requirements to be satisfied by buildings constructed in the shopping streets or business streets;

(d) the drainage of streets, land, compounds and new buildings adjacent to trunk roads;

(e) the level, width and construction of streets;

(f) the details to be included in the Annual Road Programme;

(g) the removal, demolition or alteration of any projection, structure or thing obstructing a trunk road or likely to cause danger or inconvenience to users of the trunk road or related facility;

(h) the towing or removal of any vehicle obstructing a trunk road;

(i) the control of axle loads and axle load configurations and vehicles;

(j) to fees to be charged for any service performed by the Authority; and

(k) traffic control devices.

(3) There may be imposed for the contravention of any provisions in regulations made under subsection (1) or (2) of this section a fine not exceeding @2 million or imprisonment for a term not exceeding two years or to both and in the case of a continuing offence, an additional penalty not exceeding @200,000 in respect of each day on which the offence continues.

Liability of owner and driver for damage

42. (1) Where any bridge is damaged

(a) due to any vehicle passing over it in contravention of the provisions of section 12 of this Act; or

(b) due to any vehicle passing over the bridge coming into contact with any portion of the bridge than the surface of the roadway, the owner of the vehicle and any person driving or propelling it shall jointly and severally be liable to the Authority for any damage caused to the bridge.

(2) A certificate under the hand of any person authorised by the Authority stating the amount of the cost of making good the damage shall, without proof of signature, be prima facie evidence of the cost.

Offences
43. Any person who -

(a) assaults or obstructs an inspector or authorised person acting in the execution of his
duty under section 35; or

(b) wilfully damages or otherwise interferes with any vehicle, machine, implement,
instrument, equipment, material or other property being used under this Act; or

(c) otherwise than in execution of duty removes or interferes with any beacon, peg,
mark or other sign placed on any land or at any other place for the purposes of a
survey or any other work under this Act; or

(d) obstructs any member or officer of the Ministry or other person in the exercise or
performance of a power, function or duty conferred on or entrusted on him under
this Act commits an offence and is liable on conviction to a fine not exceeding
@5,000,000 or to imprisonment for a term not exceeding two years or to both.

"road" means a way or strip of land open to the public for the purposes of travel as a matter of
right and over which abutting property owners have the right of light, air and access, and includes
roads, streets, rights, rights-of way, bridges, railway-highway crossings, tunnels, drainage
structures, traffic control devices, guardrails and protective structures connected with public ways;

"toll" includes charge levied on a road, bridge or ferry;

"trunk road" includes a public highway, ferry, road camp and traffic device.

"urban road" means a road which falls within the extended urban area of a selected District
Assembly;

Repeal and Savings

45. (1) The following enactments are repealed -

Ghana Highway Authority Decree, 1974 (NRCD 298)

Ghana Highway Authority Decree, 1974 (Commencement) Instrument (L.I. 990).

(2) Notwithstanding the repeals, any instrument made, any agreement executed and any
appointment made under the repealed Decree and in force immediately before the commencement
of this Act shall continue in force under this Act until revoked, amended or cancelled under this
Act.
3. NAMIBIA: DRAFT LEGISLATION TO ESTABLISH A ROADS AUTHORITY

ROADS AUTHORITY BILL

DRAFT NO 9: DATED 20 MAY 1997

BILL

To provide for the establishment of the Roads Authority to manage the national road network of Namibia; to amend the Local Authorities Act, 1992; and to provide for matters incidental thereto.

(Introduced by the Minister of Works, Transport and Communication)

ARRANGEMENT OF SECTIONS

Section

INTERPRETATION

1. Definitions.

CHAPTER 1

ESTABLISHMENT OF THE ROADS AUTHORITY

2. Establishment of the Roads Authority.
3. Objectives of the Authority.
4. Board of directors.
5. Vacation of office by directors and filling of vacancies.
6. Alternate directors.
7. Allowances of directors and alternate directors.
8. Duty of director to disclose interest.
9. Meetings of the board.
10. Committees of the board.
11. Executive officer and other employees.
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14. Failure of Authority to comply with certain provisions.
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GENERAL PROVISIONS

17. Annual report.
18. Financial year.
19. Accounting and auditing.
20. Regulations.
23. Short title and commencement.

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Definitions

1. In this Act, unless the context otherwise requires -

"Authority" means the Roads Authority established by section 2;

"board" means the board of directors of the Roads Authority referred to in section 4;

“manage” in relation to the national road network, means the management of that network in accordance with section 13(1);

"Minister" means the Minister of Works, Transport and Communication;

“national road network" means the network consisting of every trunk road, main road and district road proclaimed in terms of Chapter III of the Ordinance, including such a road situated in a local authority area;

“prescribed” means prescribed by regulation;

“Road Fund Administration" means the Road Fund Administration established by section 2 of the Road Fund Administration Act, 1997;

"the Ordinance" means the Roads Ordinance, 1972 (Ordinance No. 17 of 1972);

"this Act" includes the regulations made thereunder.
CHAPTER 1

ESTABLISHMENT OF THE ROADS AUTHORITY

Establishment of the Roads Authority

2.   (1) There is hereby established a body to be known as the Roads Authority.

        (2) The Authority shall be a juristic person.

Objectives of the Authority

3. Subject to the provisions of this Act and the Road Fund Administration Act, 1997, the Authority shall manage the national road network in accordance with section 13.

Board of directors

4.   (1) The affairs of the Authority shall be managed by a board of directors which shall consist of not less than four and not more than six directors appointed by the Minister and who shall have expertise relevant to the functions of the Authority.

        (2) The majority of the directors shall be persons other than staff members in the Public Service.

        (3) A person shall not be eligible for appointment as a director under subsection (1) if he or she is an unrehabilitated insolvent or has been convicted of a criminal offence and sentenced to imprisonment without the option of a fine.

        (4) A person appointed as a director under subsection (1) of this section shall, subject to section 5(1), hold office for a period of three years, and shall be eligible for reappointment.

        (5) The chairperson of the board shall be appointed by the Minister.

Vacation of office by directors and Filling of vacancies

5.   (1) A director appointed under section 4 shall vacate his or her office if he or she -

        (a) resigns as a director by written notice to the Minister;

        (b) has been absent from three consecutive meetings of the board without the permission of the chairperson of the board;

        (c) becomes subject to a disqualification referred to in section 4(3);

        (d) is removed from office by the Minister under subsection (2).

        (2) If the Minister is satisfied that a director referred to in subsection (1) -
(a) is incapacitated by physical or mental illness;

(b) is for any other good reason unable or unfit to discharge the functions of a director,

the Minister may remove such director from office.

(3) When a director referred to in subsection (1) dies or his or her office becomes vacant in terms of that subsection, the Minister shall, with due regard to the provisions of this Act, appoint a person to fill the vacancy until expiration of the period during which such director would, but for the vacation of his or her office, have continued in office.

Alternate directors

6. The Minister may, with due regard to the provisions of this Act, appoint for each director a person as alternate director to act in the place of the director in the event of his or her absence or inability to act as a director.

Allowances of directors and alternate directors

7. A director and an alternate director shall in respect of their services be paid, out of the Fund, such allowances as the board may, in consultation with the Minister, determine.

Duty of director to disclose interest

8. (1) If a director or an alternate director or his or her spouse, or any company, closed corporation or partnership of which he or she or his or her spouse is a director, shareholder, member or partner, is in any way directly or indirectly interested in a contract entered into or proposed to be entered into by the Authority, or in any other matter which is the subject of consideration by the board and whereby his or her private interest may conflict with his or her duties as a director or alternate director, he or she shall, to the extent known to him or her, disclose the nature of such interest at a meeting of the board at the first opportunity it is possible for him or her to do so.

(2) A director or an alternate director who has an interest as contemplated in subsection (1) shall not take part in the consideration of, or vote on, any question relating to a contract, proposed contract or other matter referred to in that Subsection.

Meetings of the board

9. (1) The first meeting of the board shall be held at such time and place as the Minister may determine, and thereafter, subject to subsection (2), meetings of the board shall be held at such times and places as the board determines, provided that at least one such meeting shall be held in every consecutive period of three months.

(2) The Minister may at any time, and the executive officer shall, at the request in writing of at least two directors, convene a special meeting of the board.

(3) The chairperson of the board or, if he or she is not available, such director as the directors present shall elect, shall preside at a meeting of the board.
(4) Three directors shall form a quorum at a meeting of the board.

(5) A decision of a majority of the directors present at a meeting of the board shall be the decision of the board and, in the event of an equality of votes, the director presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(6) A decision of the board shall not be rendered invalid by reason only of a vacancy on the board or of the fact that a person who is not entitled to sit as a director acted as such when the decision was taken, if such decision was taken by the requisite majority of the directors who were present at the time and entitled to vote.

(7) The chairperson of the board shall cause -

(a) a record to be kept of the proceedings of its meetings; and

(b) such record to be submitted forthwith to the Minister.

Committees of the board

10. (1) The board may from time to time establish any committee to assist, subject to such conditions and procedures as the board may determine, the board in the performance of its functions.

(2) The board may appoint any person as a member of a committee established under subsection (1), whether he or she is a director or not.

(3) At least one member of every committee shall be a director of the board.

(4) The provisions of sections 5, 7 and 8 shall apply mutatis mutandis to a member of a committee.

Executive officer and other employees

11. (1) The Authority shall, in consultation with the Minister, appoint an executive officer who shall have expertise relevant to the functions of the Authority.

(2) The Authority may appoint such other employees as it considers necessary to assist the executive officer in the performance of the functions of the Authority.

(3) If the executive officer is absent or the post of executive officer is vacant, the chairperson of the board may designate any employee of the Authority to act as executive officer until the executive officer can resume his or her functions or an executive officer is appointed, as the case may be.

(4) The Authority shall determine the remuneration and other conditions of service of the employees of the Authority, including such conditions of service in respect of medical aid, housing, gratuities and pension benefits.
(5) The Authority may, in consultation with the Minister but subject to the provisions of the Pensions Act, 1956 (Act No. 24 of 1956), establish a pension fund for the purposes of providing gratuities and pension benefits contemplated in subsection (4).

(6) The Authority may, in addition to the employees referred to in subsection (2) and on such conditions as may be agreed upon with him or her, obtain the services of any competent person to advise the Authority or assist it in the performance of its functions.

(7) The Authority shall delegate such of its powers to the executive officer and other employees of the Authority as may be necessary to enable him or her or them to perform his or her or their functions on behalf of the Authority.

Powers, duties and functions of the Authority

12. (1) Subject to the provisions of this Act, the duties and functions of the Authority shall be to -

(a) manage, subject to section 13, the national road network;

(b) make recommendations to the Minister regarding the application of this Act, amendments thereto and the making of regulations;

(c) advise and assist, on such conditions as may be agreed upon, the Minister or any body or authority referred to in section 14(1) of the Road Fund Administration Act, 1997, in regard to -

(i) matters relating to the planning, design, construction or maintenance of roads;

(ii) the exercise or performance of any relevant power, duty or function which the Minister or the body or authority may or is required to exercise or perform in terms of this Act or any other law.

(2) Subject to the provisions of this Act, the Authority shall have the power to -

(a) form, with the consent of the Minister, one or more companies under the provisions of the Companies Act, 1973 (Act No. 61 of 1973), to undertake any of the functions of the Authority;

(b) open banking accounts with banking institutions;

(c) acquire, hire and improve property required for the exercise and performance of the powers, duties and functions of the Authority and to dispose of such property, provided that the Authority may only acquire or dispose of immovable property with the consent of the Minister and subject to such conditions as the Minister may determine;

(d) borrow moneys subject to such conditions as the Minister may determine;

(e) exercise such other powers and perform such other duties and functions as may be provided for in this Act or in any other law,
and generally to do all such things as the Authority considers necessary or expedient in order to
achieve the objectives of this Act.

(3) The Minister may, in consultation with the competent authority, and subject to such terms and
conditions as may be agreed upon, make State land or land controlled by the State or any other facility
thereon or any other movable property available to the Authority for the exercise and performance of the
powers, duties and functions of the Authority.
CHAPTER II

MANAGEMENT OF ROADS

Management of roads

13. (1) Notwithstanding anything to the contrary contained in any other law, but subject to the provisions of this Act and with due regard to the funds at its disposal, the Authority shall, as the agent of the Minister, undertake the management of the national road network including -

(a) the planning, design, construction and maintenance of roads which are part of the national road network;

(b) the establishment and operation of facilities for the testing of materials in connection with the construction and the maintenance of roads;

(c) the supervision of work contracted out under subsection (2);

(d) the operation of road management systems;

(e) the prevention of the excessive damaging of roads by road users or any other parties;

(f) any other function assigned to it by any law or by the Minister by notice in the Gazette which are necessary in order to achieve the objectives of this Act.

(2) The Authority may -

(a) enter into an agreement with any person, body, organization or authority to perform a particular act on behalf or in favour of the Authority in respect of any matter related to the powers, duties and functions of the Authority;

(b) in writing delegate any of its powers to such person, body, organization or authority if the Authority deems it necessary for the efficient performance of any act contemplated in paragraph (a),

provided that all construction and maintenance work shall, subject to the provisions of the Roads Contractor Company Act, 1997, be so contracted out.

(3) Notwithstanding anything to the contrary contained in the Ordinance, the Minister shall, for the purposes of subsection (1), and subject to such conditions as he or she may determine, delegate in writing to the Authority every relevant power conferred upon him or her by Chapter V of the Ordinance.

(4) Any delegation effected under subsection (3) -

(a) may only be withdrawn by the Minister if the delegated power is no longer required by the Authority;
(b) shall not divest the Minister of any power delegated.

**Failure of Authority to comply with certain provisions**

14. (1) If any person is of the opinion that the Authority has failed to comply with any provision of this Act or a procedures agreement referred to in section 15 or a performance statement referred to in section 16, he or she may lodge with the Minister a complaint which shall

(a) set out the grounds of the complaint and the *locus standi* of the complainant;

(b) whenever appropriate, be accompanied by proof of the failure.

(2) On receipt of any such complaint the Minister shall provide a copy thereof to the Authority.

(3) The chairperson of the Authority shall, within 14 days after receipt of a copy of a complaint, lodge a written reply with the Minister.

(4) The Minister may either -

   (a) dismiss or deal with the complaint on the basis of the reply referred to in subsection (3); or

   (b) on such terms and conditions as he or she may determine, appoint one or more persons as a board of inquiry to investigate any complaint lodged in terms of this section.

(5) The board of inquiry shall thereupon, if a hearing is warranted in its opinion, appoint a time and place for a hearing and give reasonable notice thereof to the complainant and the Authority.

(6) The board of inquiry may, with the prior approval of the Minister, obtain the services of any competent person to advise or assist it in the performance of its functions.

(7) The board of inquiry may summon and examine witnesses on oath and call for the production, and grant inspection of, books, documents or other objects.

(8) The laws and rules governing the magistrates' courts of Namibia shall *mutatis mutandis* apply to procuring the attendance of witnesses and their compensation, their examination and privileges, the production of books, documents and other objects and for that purpose the chairperson of the board of inquiry or, where the board consists of one person only, such person, shall have power to sign such documents as may be necessary for the purpose of the inquiry, in the same manner as the magistrate or the clerk of the court has power to do under the rules of the magistrate's courts.

(9) Any process to be served in terms of this section for the purposes of an inquiry shall be served by a member of the Namibian Police Force.

(10) Any person who, having been duly summoned -

   (a) refuses, or without sufficient cause fails to attend the hearing in question at the place, date and time specified in the summons;
(b) refuses to take the prescribed oath or to make an affirmation when required to do so by the person presiding at the hearing;

(c) leaves the hearing without the permission of the person presiding at such hearing, whether or not such person has given evidence;

(d) refuses to give evidence at the hearing or refuses to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her or refuses to produce any book, document or object which such person has in terms of the summons been required to produce, shall be guilty of an offence and on conviction be liable to a fine not exceeding N$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(11) The complainant as well as the Authority shall be entitled to be assisted or represented at a hearing by any other person, to give evidence and, whether personally or through a representative

(a) to be heard;

(b) to call witnesses;

(c) to cross-examine witnesses;

(d) to have access to documents produced in evidence.

(12) The chairperson of the board of inquiry or, where the board consists of one person only, such person, shall after the conclusion of the hearing, forthwith submit to the Minister the record of the proceedings of the inquiry, including all books, documents or other objects adduced to the inquiry, together with a written statement of the board's finding and its reasons therefor and its recommendation in regard to any direction which the Minister may give in terms of subsection (13).

(13) If after such an investigation, the Minister is satisfied that the Authority has failed to comply with any provision contemplated in subsection (1), the Minister may in writing direct the Authority to comply with such provision within the period determined by the Minister.

Procedures agreement

1.5. (1) The Authority shall submit a draft procedures agreement to the Road Fund Administration which shall contain the following -

(a) Particulars of the management and financial systems to be implemented by the Authority, including such particulars as are necessary to assess whether the Authority -

(i) manages the national road network in an efficient manner and in accordance with the relevant one year and five year plans contemplated in section 14(2) of the Road Fund Administration Act, 1997;

(ii) makes efficient use of the funds made available to it in respect of approved roads construction and maintenance projects and programmes and utilizes it in accordance with the provisions of the said one year and five year plans;
(iii) is adequately staffed by suitably qualified employees;

(b) the principles to be applied in budgeting for administrative expenditure;

(c) the procedures to be followed by the Authority in the evaluation of and awarding of tenders to, and negotiation of agreements with, contractors;

(d) the procedures to be followed by the Authority in the appointment of persons contemplated in section 11(6);

(e) particulars regarding any other matter relating to the exercise or performance of the Authority's powers, duties or functions under this Act as may be required by the Road Fund Administration:

Provided that the first draft procedures agreement shall be so submitted within one month after the commencement of this Act or such later date as the Minister may fix by notice in the Gazette.

(2) The Road Fund Administration shall, upon receipt of a draft procedures agreement, either approve it or return it to the Authority with directions to amend it.

(3) The Road Fund Administration and the Authority may, mutatis mutandis in accordance with subsections (1) and (2), amend a procedures agreement from time to time.

(4) The Authority shall, before finalization of a draft procedures agreement or a draft amendment thereof, consult with such interested parties as the Minister may determine.

(5) The failure of the Authority to comply with any provision of a procedures agreement or any amendment thereof shall not affect the validity or enforceability of any act, agreement, right, obligation or liability performed, entered into acquired or incurred by the Authority.

(6) A procedures agreement and any amendment thereof shall at all times be available for inspection it the office of the Authority and shall, subject to the directions of the Minister, be published in condensed form in at least two daily newspapers circulating nationwide.

(7) For the purposes of this section, "administrative expenses" includes -

(a) the cost of acquiring immovable property for administrative purposes;

(b) insurance premiums payable for the purposes of section 12(2)(e).

Performance statement

16. (1) The Authority shall, after consultation with the Administration and not later than three months before the commencement of each financial year, submit a draft performance statement to the Minister which shall contain the following:

(a) such particulars as are necessary to evaluate whether the Authority has implemented the standards and measures prescribed under section 20(a), (b) and (c);
(b) the principles which will be applied by the Authority in relation to conditions and policies of employment, including, such principles in regard to the appointment of persons contemplated in section 11(5);

(c) the measures by which the performance of the Authority in relation to projects and programmes contemplated in section 13(3) of the said Road Fund Administration Act, 1997, can be assessed; and

(d) particulars of any other matter relating to the exercise or performance of the Authority's powers, duties and functions under this Act as may be required by the Minister.

(2) Section 15(2), (3), (4), (5) and (6) shall *mutatis mutandis* apply to a performance statement and any amendment thereof.
CHAPTER III
GENERAL PROVISIONS

Annual report

17. (1) The Authority shall within six months after the end of each financial year submit to the Minister a report on the activities of the Authority during that financial year and which shall include -

(a) the audited financial statements of the Authority and an audit opinion of the Auditor-General;

(b) an assessment of the Authority's performance in relation to its performance statement referred to in section 16;

(c) such other matters as the Minister may require.

(2) The annual report referred to in subsection (1) shall, together with the relevant performance statement or amended performance statement referred to in section 16 and the annual financial statements and report of the Auditor-General referred to in section 19, be tabled in the National Assembly by the Minister within 28 days after the receipt of the last outstanding document if the National Assembly is then in ordinary session or, if the National Assembly is then not in ordinary session, within 28 days after the commencement of its next ensuing session.

Financial Year

18. The financial year of the Authority shall be as determined by the board.

Accounting and auditing

19. (1) The Authority shall keep such accounting records as are necessary in accordance with internationally accepted accounting practice to reflect fairly the state of affairs and business of the Authority and to explain the transactions and financial condition of the Authority and of each company referred to in paragraph (a) of section 12(2).

(2) The Authority shall ensure that financial statements are prepared separately in respect of each financial year of the Authority and of each company contemplated in subsection (1).

(3) The accounting records and financial statements shall be audited annually to the satisfaction of the Auditor-General by an auditor appointed by the Authority and who shall be registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951).

Regulations

20. The Minister may, after consultation with the Authority, make regulations in relation to -
(a) the minimum standards for the construction and maintenance of the national roads network, which are reasonably necessary to -

(i) achieve a safe road system;

(ii) ensure compliance with any international agreement binding upon the Government of Namibia;

(b) such minimum standards for the maintenance of any road which is part of the national roads network as may, in the opinion of the Minister, be reasonably necessary in the national interest to promote accessibility to any area in Namibia;

(c) the measures which are, in the opinion of the Minister, reasonably required in the management of the national roads network to cause the least possible disruption of the environment, but subject to the provisions of any other law;

(d) the financial management and control of the affairs of the Authority;

(e) the manner in which the Authority may execute or perform any power, duty or function in terms of this Act;

(f) all other matters in general which are by this Act required or permitted to be prescribed or which are necessary in order to achieve the objectives of this Act.

Transitional provisions

21. (1) Subject to the provisions of this section and section 9 of the Roads Contractor Company Act, 1997, the Minister shall, after consultation with the Minister of Finance and on such conditions as the Minister may determine, transfer to the Authority such State assets, liabilities, rights or obligations, which relate to or are connected with the management of roads by the Department of Transport of the Ministry on the date immediately before the commencement of this Act, as the Minister may determine.

(2) Notwithstanding any provision to the contrary in any other law, the Authority shall, with effect from the date on which the assets, liabilities, rights and obligations are transferred in terms of subsection (1), be vested with the ownership of the assets and rights and be charged with the liabilities and obligations so transferred or assigned to it.

(3) A certificate issued by the Minister in which it is stated that any State land or a servitude or other real right or lease or any other asset or right described in such certificate has been transferred to the Authority in terms of subsection (1), shall be sufficient proof that the asset or right so described vests in the Authority.

(4) Upon the submission of a certificate referred to in subsection (3) to the Registrar of Deeds or to any other person in charge of any other office where a register or record is being kept of the ownership of or entitlement to an asset or right described in such certificate, the Registrar or such person, as the case may be, shall make such entries in or on any relevant register, title deed or other document in his or her office or submitted to him or her as may be necessary to effect the transfer in the name of the Authority.

(5) Notwithstanding any legal provision to the contrary, no servitude or other right of any kind in respect of State land transferred to the Authority in terms of subsection (1) shall be
acquired by prescription.

(6) The Authority shall be substituted for the State as a contracting party in respect of any agreement transferred to the Authority in terms of subsection (1), without such substitution bringing about a novation of such agreement.

(7) The value of assets and liabilities transferred to the Authority in terms of subsection (1) shall be determined by the Minister with the concurrence of the Minister of Finance.

(8) Notwithstanding any provision to the contrary in any other law, no stamp duties, transfer duties or registering fees payable in terms of any law for acquisition or transfer of assets or rights shall be payable in respect of the transfer of assets or rights by the State to the Authority in terms of subsection (1).

(9) Notwithstanding anything to the contrary contained in any other law, the Minister may, on or before the transfer date contemplated in subsection (1), in consultation with the Prime Minister and in accordance with the provisions of an agreement concluded with the Authority, transfer to the Authority any staff member in the Public Service as defined in section I of the Public Service Act, 1995 (Act No. 13 of 1995), but subject to such member's consent.

Amendment of section 32 of Act 23 of 1992

22. Section 32 of the Local Authorities Act, 1992, is hereby amended by the substitution for subsection (1) of the following subsection:

(1) A local authority council may enter into an agreement with the Government of Namibia, [with one or more] any other local authority [councils] council [or with any], a regional council or any other person providing for the exercise or performance, on such terms and conditions as may be agreed upon -

(a) by such local authority council as the agent of the Government or any such other local authority [councils] council or regional council;

(b) by the Government or [any] such other local authority [councils] council, [or] regional council or person as the agent of the local authority council; or

(c) by the local authority council in cooperation with the Government or [any] such other local authority [councils or] council, regional council or person,

of any power, duty or function conferred or imposed in terms of this Act or any other law upon the local authority council or any functionary of the Government or such other local authority [councils] council or regional council, as the case may be."

Short title and commencement

23. (1) This Act shall be called the Roads Authority Act, 1997, and shall come into operation on a date to be determined by the Minister by notice in the Gazette.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.
(3) Any reference in any provision of this Act to the commencement of this Act shall be construed as a reference to the date determined under subsection (2) in relation to such provision.
4. SATCC MODEL LEGISLATION TO ESTABLISH A ROADS AUTHORITY

[This model legislation was provided courtesy of the SATCC Secretariat in Maputo, Mozambique]

EXPLANATORY MEMORANDUM

1. FROM GENERAL POLICIES TO SPECIFICS

The Roads Act acknowledges the vital role played by roads in the economy by providing access to major centres of population and economic activity. Accordingly, the Roads Act creates a regulatory framework for the management and funding of roads which is situated within the broader policy regime regulating economic growth and development.

The SADC Protocol on Transport, Communications and Meteorology (the Protocol) is one of the main policy documents behind the planned stimulation of regional economies. This groundbreaking agreement identifies growth and development as fundamental objectives and acknowledges the essential role played by transport in the achievement thereof. The Protocol entreats Member States to:

- restructure state-owned transport assets in a manner that limits direct State involvement;
- maximise private sector investment in transport infrastructure and services;
- ensure effective management of transport infrastructure and services;
- create a strategic partnership between the public and private sectors;
- adequately protect the public interest; and
- develop transparent investment regimes and incentives.

The broad policy directives outlined in the Protocol are transposed by the Investment in Transport Act (ITA) into provisions that streamline and facilitate private investment. The primary aim of this Act is the broad regulation of investment in transport assets and mobility services. To this end, it sets out a comprehensive legal framework aimed at creating a favourable enabling environment for private investors. It provides for:

- an investment regime, consisting of a defined investment approach and methodology;
- institutional reforms aimed at restructuring state-owned enterprises and focussing government on its core role;
- strategic planning; and
- monitoring by the State in the public interest.

The Roads Act picks up on the momentum created by the Investment in Transport Act and makes it sector-specific. The provisions of ITA apply wherever relevant, and the Roads Act contains a number of references to the investment regime; types of contract; and restructuring plan as defined in this Act. More importantly, the Roads Act is a continuation of the general polices outlined above. These are developed in
two main areas of focus: providing a framework for the commercial management of roads; and instituting measures to ensure an adequate and stable flow of funding for road management and operations.

2. **TO WHOM DOES THE ROADS ACT APPLY?**

The provisions of the Roads Act apply to all roads in a Member State. It is therefore applicable to anyone who owns, is in control of, or responsible for, roads as defined. According to the Act a road includes the following:

- primary, secondary and tertiary roads;
- urban roads;
- bridges and tunnels.

Roads controlled by second and third tier government structures are specifically excluded from this definition. The practical effect of this is that in a Member State where the authority for roads is vested in structures on national, provincial and local government levels the Roads Act will apply to roads under the control of national government only. The Minister responsible for roads is empowered to declare a road subject to a second or third tier government authority to be a road for the purposes of the Act, but this must be approved by the provincial or local authority in question.

3. **ROAD MANAGEMENT: WHAT DO WE WANT TO ACHIEVE?**

The goals of the Roads Act rest on two pillars: providing a framework for the commercial management of roads incorporating public and private sector stakeholders, and ensuring an adequate and stable supply of funds to the roads sector. These two broad aims encompass the following more specific objectives:

- to lay out an institutional framework for the commercial management of roads;
- to actively involve private road users in decision making by apportioning responsibility for road management between the State and private sector;
- to ensure managerial accountability;
- to encourage the introduction of the user pays principle;
- to introduce commercial road management practices;
- to encourage efficient and realistic planning based on economic criteria;
- to encourage technical efficiency in the roads sector and the preservation and management of road infrastructure.
- to disseminate roads expertise in the region through consultation and contracting;
- to rightsize the personnel structure of roads authorities;
- to promote environmentally-sensitive road development; and
• to strengthen enforcement of laws and regulations relating to freight and passenger road transport.

4. ROAD MANAGEMENT: HOW CAN WE ACHIEVE OUR GOALS?
The enabling framework laid down by the Roads Act for the management of roads can be clarified by highlighting the following three key focus areas: institutional arrangements; funding; and technical aspects.

4.1 INSTITUTIONAL ARRANGEMENTS

Two institutional elements are clear prerequisites for effective road management. These are the creation of a board comprising private and public sector expertise; and the creation of a fund that receives and dispenses with funds intended for road use. The institutional structure outlined in the Roads Act responds to this finding.

The distinguishing feature of this institutional structure is the establishment of a Roads Agency with juristic personality as distinct from the Ministry or Department. The Minister remains responsible for policy development but technical and financial road management functions are taken over by the agency. The agency consists of

• a board responsible for supervising the agency;
• a chief executive officer responsible for the technical and administrative management of the agency;
• a fund manager responsible for the financial management of the agency; and
• professional, technical and administrative staff.

A road fund is established and administered by the board.

The Roads Act recognizes that funds are scarce and that Member States may not have the resources to implement the institutional structure outlined above. In the event of a Member State being unable to proceed with the establishment of a Roads Agency the Roads Act makes provision for an alternative option in the form of the appointment of a Road Commissioner. The Road Commissioner is an official in the Ministry/Department who executes functions comparable to the chief executive officer of the agency. The functions performed by the professional, technical and administrative staff of the agency are then performed by civil servants. The Member State must still, however, take all possible steps to establish a board and road fund and appoint a fund manager in charge of the latter.

Common to both options is the clear apportionment of responsibility of the technical and administrative management component to one officer (the chief executive officer or road commissioner), and the financial management component to another officer (fund manager). Both of these officers are appointed and report separately to the board.

The composition of the board is a critical issue. It must give effect to the Roads Act's stated aims of incorporating public and private sector stakeholders in road management, and providing road users with a say in decisions that may impact upon them. As such the 17 members of the board comprise representatives from transport service providers; transport users; the engineering profession; the banking industry; government; and road management and financing. The chief executive officer/road commissioner and fund manager are ex officio members of the board but have no vote. In order to facilitate the functioning of the board, the Minister may limit the number of members of the board to 12.
by nominating only 5 representatives from among the 10 disciplines representing service providers, users, the banking industry and engineering profession. If the Minister adopts this approach he is, however, obliged when the term of office of the board expires, to ensure that the 5 disciplines not previously represented are included in the new board.

The functions and duties of the board and the officers as defined under the Roads Act give effect to the principle of commercial, accountable, and planned mad management.

• The board executes supervisory, monitoring, advisory and planning functions. It also gives effect to the provisions of the Investment in Transport Act by monitoring the release of assets for private sector investment in terms of the investment and release strategy.

• The chief executive officer is primarily responsible for managing road operations (which includes overseeing all technical aspects), and procurement on behalf of the agency in terms of the Investment in Transport Act. He or she performs in terms of an operational plan which must specify a three year roads development programme in line with the investment and release strategy.

• The fund manager manages the road fund on behalf of the agency and is responsible for the integrity and accuracy of all accounting and financial procedures, besides playing an important advisory role in respect of road user charges and fuel levies. His or her functions must be performed in terms of an approved financial plan which is also compiled with a three year scope in view.

4.2 FUNDING

The Act acknowledges that funds available for roads are limited and that their allocation must occur in an accountable and responsible manner. The provisions in respect of funding fall into two major areas of concern:

• the introduction of the user pays principle whereby road users progressively bear the full cost of road use, and

• a detailed description of the road fund in order to determine very clearly who is paying for road operations and how funds are being allocated.

The fund manager advises the board on the introduction of road user charges and must recommend an equitable and transparent charging methodology. He or she must also propose a formula for the adjustment of charges and regularly assess their adequacy. User charges may comprise monies received from:

• road user charges which includes weight-distance type charges; cross-border road user charges; entry fees; abnormal or awkward road charges; and parking and congestion charges;

• tolls;

• overloading charges (excluding fines for ovedoading);
The road fund is established to receive all appropriations and revenue payable to the agency and to finance all expenses arising from the Roads Act. The following accounts must be established:

- a user charges account;
- an appropriation account;
- a loan account;
- a capital account;
- a fee and fine account.

The provision for separate accounts makes it possible to determine the source of the fund. This is important in order to assess the incremental implementation of the user pays principle, and because the certain funds may only be used to defray expenditure of a specified nature. For instance, monies received from mad user charges may only be used to defray expenditure relating to the maintenance, rehabilitation or upgrading of roads in respect of which such charges have been imposed.

4.3 TECHNICAL

The agency has additional powers relating to the technical aspects of road development, planning, construction, maintenance, rehabilitation and upgrading. Powers are thus conferred upon the agency that will enable it discharge its mandate in this regard. It may expropriate land for the purposes of road construction or access to such construction; determine access to and egress from roads; close or divert roads; dispose of storm-water on roads; give written permission for the erection of structures on, over or below roads, and advertisements on roads; remove disused vehicles, machinery and other rubbish on or near roads, and regulate trading on roads or building restricted areas.

The Agency also has the power to prosecute offences created by the Roads Act and may authorise any of its employees to take steps aimed at preventing such offences. The provisions in this regard are thus aimed at ensuring responsible and effective road management.

ROADS ACT

To provide a framework for the development, planning, construction, maintenance, rehabilitation and upgrading of the roads network to meet the demand for commercial and private road transportation; to establish a road agency (or to appoint a roads commissioner) for road management and funding in the country; to establish a road board to oversee the operations of the agency; to set up a road fund to finance the operations of the agency and provide for its management and administration; to provide for monitoring procedures; and to provide for matters connected therewith.
PREAMBLE

WHEREAS roads play a central role in the nation's economic life by providing access to major centres of population and economic activity;

WHEREAS funds available for roads are limited and must be allocated with due regard to the interests of all economic sectors;

WHEREAS it is essential to ensure a stable and adequate flow of funds to the roads sector and to limit road spending to what is affordable;

WHEREAS it is desirable to commercialize the management of roads and ensure that road users progressively bear the full cost of road use;

WHEREAS government wishes to share road management responsibility with road users in particular and the broader public sector in general;

WHEREAS effective road management requires a clear definition of responsibility, managerial accountability and the empowerment of those responsible for roads;

BE IT ENACTED BY the Parliament of....... as follows:

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Definitions, Application, Objects and role of Minister

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2. Application of Act

3. Objects of Act

4. Role of Minister
5. Application of Investment in Transport Act

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Roads Agency

6. Establishment of Roads Agency

7. Transfer of assets, rights and liabilities General

8. General powers of agency

9. Appointment and composition of board

10. Period of office of members of the board

11. Functions, powers and duties of the board

12. Meetings of the board

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14. Appointment of chief executive officer and fund manager

15. Functions, powers and duties of the chief executive officer

16. Operational Plan

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32. Additional powers of agency
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35. Entry upon land
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41. Disused vehicles or machinery and other rubbish on or near roads
42. Trading on road or in building restriction area
43. Agency may pay compensation for damage or loss due to its activities
44. Law enforcement

Chapter V
General Provisions

45. Regulations

46. Commencement
Chapter I

Definitions, Application, Objects and role of Minister

Definitions

1. In this Act, unless the context otherwise indicates-

“agency” means the road agency established in section 6;

“board” means the road board appointed in terms of section 9:

“building restriction area” means an area of land (excluding land in an urban area) -

(i) situated alongside a road within a distance of 60 metres from the boundary of such road: or

(ii) situated within a distance of 500 metres from any point of intersection;

“commissioner” means the road commissioner appointed in terms section 6;

“financial plan” means the plan contemplated in section 18 drafted by the fund manager;

“fund” means the road fund established in section 25;

“fund manager” means the person appointed in section 14;

“local authority” means a district, city or town authority providing or coordinating services which may include roads;

“Minister” means the Minister responsible for roads;

“operational plan” means the plan contemplated in section 16 drafted by the chief executive officer;

“Permanent / Principal Secretary / Secretary / Director-General” means the Permanent/Principal Secretary/Secretary / Director-General responsible for roads;

“prescribed” means prescribed by the Minister by regulation;

“report” means the annual report contemplated in section 23;

“road” or “roads” include(s) primary, secondary and tertiary roads, urban roads and includes a bridge or tunnel, except roads which are the responsibility of second or third tier government structures;

“State” means the Republic / Kingdom of ... ;

“toll plaza” means a structure on a toll road where toll is payable under this Act, or any electrical or mechanical device on a toll road for recording the liability to pay toll, or any combination of such a structure and such a device and includes a toll gate; and
“user charge” means a charge imposed in relation to the use of a road other than a toll road and includes

(i) weight-distance type charge;

(ii) cross-border road user charge;

(iii) entry fee;

(iv) abnormal or awkward load charge; and

(v) parking and congestion charge.

Application of Act

2. (1) The provisions of this Act apply to all roads in the Republic Kingdom.

2. (2) The Minister may, upon advice of the board, by notice in the Gazette, declare-

(a) any road under the control of second or third tier authority to be subject to the provisions of this Act, subject to the concurrence of such authority; or

(b) any route of which the boundaries have been fixed by survey, to be a road for the purposes of this Act.

(3) A declaration in terms of subsection (2) has the effect of transferring such road or route to the ownership of the agency and the chief executive officer must note such transfer in the asset register of the agency.

Note: In practice, the practical effect of this provision will differ between Member States. In some Member States, authority for roads is only vested in one level of government, whereas in others both national, provincial and local government may have authority over certain roads. In the former case, the need for subsection (2)(a) falls away. In the latter case, the Act is intended only to apply to roads under the control of national government, although the mechanism is created, through a consultative process, for control over a road to be transferred. Where no agency is created (see introductory note under chapter II), the need for subsection (3) will fall away as ownership of the assets will remain vested in the State.
Objects of Act
3. The objects of this Act are to-

(1) create a viable and sustainable institutional framework for the management of roads incorporating public and private sector stakeholders;

(2) ensure a stable and adequate source of funding for road management and to establish clear channels to secure the flow of such funds to the agency;

(3) provide road users with a role in decision-making regarding the management and financing of roads;

(4) introduce commercial road management practices and ensure managerial accountability;

(5) encourage efficient and realistic planning based on economic criteria;

(6) encourage private investment and financing of road infrastructure and reduce the need for financing of road construction and maintenance activities by the exchequer;

(7) encourage technical efficiency in the roads sector and preserve and manage assets that vest in road infrastructure;

(8) make use of the expertise available to the region where local expertise is non-existent or insufficient to realise the objects of this Act and build existing contracting and consulting capacity in the country by utilising such expertise;

(9) rationalize the personnel employed by road authorities and facilitate a shift from force account use to private contracting;

(10) manage impacts of proposed road development in manner which is environmentally sensitive; and

(11) collaborate with road authorities to strengthen enforcement of passenger transport and freight transport laws and regulations.

Role of Minister
4. (1) The Minister must develop and regularly review policy in respect of roads to ensure that the objects of this Act are realized.

(2) The Minister must ensure that the policy is implemented by exercising the powers and executing the functions vested in him or her in terms of this Act.

(3) The Minister-

(a) must execute his or her functions in terms of this section with assistance from-

(i) the permanent / Principal secretary / Secretary / Director-General; and
(ii) the agency; and

(b) may for this purpose, at his or her discretion, consult any specialist advisor.

(4) The Minister is guided in developing policy by the board and must regularly consult with the board to ensure the effective implementation of the provisions of this Act.

(5) The Minister must consult with the Minister of Finance regarding all decisions taken in terms of this Act relating to the financing of roads.

(6) For the purpose of this section, the Minister may from time to time, by notice in the Gazette and or a newspaper circulating countrywide, publish policy statements or information notices regarding the development and implementation of roads policy in terms of this Act.

NOTE: Where the option is followed not to establish an agency, the reference in subsection (3)(a)(ii) to agency is replaced with commissioner - see note on institutional framework under section 5.

Application of Investment in Transport Act

5. The provisions of the investment in Transport Act, 19.. apply, where relevant, to any power, function or duty exercised by any person in terms of this Act.
Chapter 11

Roads Agency

NOTE: Various institutional models are available for the management and financing of roads. In practice, the models vary in the degree to which they provide for core functions to be performed within a Ministry / Department (as is the case currently within Member States) or whether functions are devolved to a separate agency, created to manage road operations and finance. In drafting the Act, the project team has been sensitive to the need not to proliferate institutions and to create needless bureaucracy. On the other hand, certain institutional elements are clear prerequisites for effective road management. These are:

- a board which encompasses a spectrum of private and public sector expertise to enhance the quality of decision-making and to ensure that road users and other stakeholders have a voice in decision-making affecting their activities; and

- a fund which receives funds dedicated to roads and dispenses funds for that purpose.

In practice, technical operational functions can be performed both in a Ministry / Department or by an outside agency. In practice, the latter option is advantageous in so far as commercial management principles can be more effectively applied, by ensuring better road management and more accurate road pricing. Where an agency is created, those functions normally performed by the Ministry / Department are transferred to the agency along with some or all of the government staff employed for that purpose.

Based on the above, this Act has been drafted to provide for:

- a road agency;
- board supervising the agency; and
- road fund administered by the board.

An alternative option would be not to create an agency, but merely to provide for the creation of a board and fund. If this option is adopted, a policy choice needs to be made regarding the role of the board. In practice, the board could:

- retain executive functions, subject to oversight by the Minister, while day-to-day management is undertaken by civil servants (this model is in use in some Member States, e.g. South Africa and Zambia); or

- retain executive functions in the Ministry/Department (as is currently the case in most Member States) but create an advisory role for the board.
(a) the board;
(b) the chief executive officer;
(c) the fund manager; and
(d) the professional, technical and administrative staff seconded to or appointed by the agency.

In the event that Member States anticipate constraints in adopting the entire institutional framework (agency / board / fund) it is nevertheless recommended that the alternative option of creating a board and fund be retained as a minimum. Under such an option, a board should have executive as oppose to merely advisory functions. It is, furthermore, proposed that a statutory post be created for a road commissioner who would be an official in the Ministry/Department. This would provide the advantage that specific management functions can be vested in such official and specific lines of responsibility can be created to enhance managerial effectiveness. Such an official would then support the PS/DG with executory and advisory functions. The impact of the alternative option on the provisions of the Act are discussed below by way of explanatory notes.

NOTE: If the alternative model is adopted, the provision will read as follows:

"(1) The Minister appoints-

(a) a board;
(b) a road commissioner; and
(b) a fund manager.

to perform the functions specified in this Act with regard to the financing, management, control,
Planning, development, construction, design, maintenance, rehabilitation, improvement and operation of a roads network system in the country."

State pertaining to roads are transferred to the agency on the date of entry into force of this Act.

(2) The Minister may, by notice in the Gazette, published on or before the date referred to in subsection (1), specify the assets, rights and liabilities of the State which are not transferred to the agency.

(3) The agency assumes custodianship of the assets and rights formerly vested in the State and deals therewith in the manner specified in this or any other Act.

NOTE: If the alternative model is adopted, the need for this section falls away.
General powers of agency
8. Without derogating from its power generally to perform the juristic acts of a juristic person, the agency has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions, including to:

(1) institute and conduct civil proceedings with regard to all matters relating to its functions;

(2) acquire, hold, dispose of and deal with property, including property formerly owned by the State transferred to the agency;

(3) enter into contracts;

(4) receive monies by way of tolls, road user charges or from any other source specified in this Act;

(5) let or hire plant, machinery, equipment or goods not immediately required for the purpose of the agency;

(6) charge or fix terms for services and information supplied by it,

(7) appoint agents and attorneys;

(8) engage consultants; or

(9) appoint personnel, subject to approval by the Minister, on such terms, conditions and remuneration as the Minister may, in consultation with the Minister of Finance, approve, and

(10) invest money not immediately required for the purpose of the agency in a sound commercial manner or as prescribed by the Minister.

NOTE: If the alternative model is followed, these powers are generally vested in the PS/DG, but could be exercised under delegation by the road commissioner subject to supervision by the board.

Appointment and composition of board
9. (1) Subject to subsection (6), the board comprises 17 members appointed by the Minister, constituted from the following sectors-

(a) three persons representative of transport service providers able to advise the board, amongst others, on the needs of the road transport industry, the flow of passengers and freight, facility needs and law enforcement, nominated by-

(i) the bus passenger transport industry;

(ii) the taxi industry;
(iii) the road freight transport industry;

(b) five persons representative of transport users able to advise the board, amongst others, on the general needs of the transport users, goods and commodity flows, import and export needs and logistical requirements, nominated by the-

(i) national chamber of commerce;

(ii) national farmers association;

(iii) exporter's association;

(iv) logistics industry; and

(v) tourism industry.

(c) one person nominated by the engineering profession able to advise the board, amongst others, on technical standards and project management;

(d) one person nominated by the banking industry able to advise the board, amongst others, on financing options and financial structuring;

(e) three persons representative of government, comprising-

(i) the Permanent / Principal Secretary / Secretary / Director-General or his or her nominee to represent the Minister in his or her policy formulation and implementation capacity;

(ii) the Permanent / Principal Secretary / Secretary / Director-General, responsible for public works or his or her nominee to ensure convergence between the implementation of roads and public works policy;

(iii) one person nominated by the Minister of Finance to advise the board regarding fiscal policy, public funding priorities and availability of funds; and

(f) two persons appointed by the Minister on the basis of his or her skill and expertise in relation to road management and financing; and

(g) the-

(i) chief executive officer; and

(ii) fund manager;
by virtue of holding their respective positions, who may participate in the deliberations of the board but have no vote.

(2) No person is eligible to be a member of the board if he or she is-

(a) a member of Parliament, a provincial legislature or council of a local authority; or

(b) is disqualified to serve as a director in terms of the provisions of the Companies Act, 19...

(3) Prior to the appointment of the board, the Minister must-

(a) by notice in the Gazette and one newspaper circulating countrywide, call for nominations of the members of the board;

(b) in the notice referred to in paragraph (a) set a date by which persons wishing to object to or comment on the appointments may do so; and

(c) take into account comments or objections received in respect of proposed appointments.

(4) The Minister must by notice in the Gazette and one newspaper circulating countrywide, publish a list of proposed members of the board within one month after their appointment.

(5) The Minister must designate one of the members of the board as the chairperson and another as deputy chairperson until the board has met in terms of subsection (6) and is able to elect its own presiding officers.

(6) The Minister may, in order to facilitate the functioning of the board, limit the membership of the board to 12 persons by requesting nominations from only 5 stakeholder groups referred to in subsection (1)(a), (b) and (c) and appointing the 5 persons nominated by such groups to represent the category of service providers, users and the banking industry.

(7) In the event that the Minister acts in terms of subsection (6), he or she must, upon expiry of the period of office of the persons referred to in subsection (6), replace those persons by requesting nominations from stakeholder groups not represented in the previous board in order to represent the category of service providers, users and the banking industry.

NOTE: If the alternative model is followed, the reference to chief executive officer in subsection (1)(g)(i) is replaced by a reference to the road commissioner.

Period of office of members of the Board
10. (1) With the exception of the members of the board referred to in section 9 (1)(e) and (f), a member of the board holds office for the period not longer than 3 years.

(2) A member of the board, including the chairperson, deputy-chairperson, the chief executive officer and the fund manager, must vacate his or her office-

(a) upon expiry of his or her term of appointment"
(b) if he or she is incapacitated by physical or mental illness;

(c) if his or her estate is sequestrated;

(d) if he or she becomes disqualified to serve as a director in term of the provision of the Companies Act, 19..; or

(e) if he or she is nominated as a candidate for election as a member of Parliament or provincial legislature or the council or other governing body of a local government body.

(3) The Minister may remove a member of the board from office if such member-

(a) fails to perform his or her duties diligently or efficiently;

(b) is unable to perform his or her duties because of mental illness or disability; or

(c) has been absent without the permission of the chairperson from three consecutive meetings, without good reason.

(4) An appointed member of the board may resign on one month's written notice to the Minister.

(5) The Minister must fill vacancies on the board as soon as possible.

Functions, powers and duties of the board

11. (1) The board exercises a fiduciary role in respect of public monies entrusted to it by Parliament and road users and to this end executes the functions and has the powers vested in it by this Act.

(2) It is the function of the board to-

(a) oversee the effective performance of the agency;

(b) set operational priorities with regard to construction, upgrading, rehabilitation and maintenance of roads;

(c) monitor revenue and expenditure flows to and from the fund;

(d) monitor the release of assets for private sector investment in terms of the investment and release strategy;

(e) consider recommendations by the fund manager regarding the diversification of funding sources;

(f) advise the Minister on funding requirements for the performance of the agency's days of a request signed by not fewer than seven (7) members of the board.

(3) A quorum for a meeting of the board is one more than half of the members appointed.
(4) Except where otherwise provided, a decision of the majority of the members of the board present is the decision of the board.

(5) The chairperson must exercise a casting vote when an equality of votes occur.

(6) The procedure at meetings of the board must be determined by the board subject to the directions of the Minister, if any.

(7) A member of the board may not take part in the discussion of or the making of decisions about matters before the board in which he or she or his or her spouse, blood relations, partner or employer, other than the State, or the partner or employer of his or her spouse or blood relations has, directly or indirectly, a pecuniary interest.

**Conditions of service of members of the board**

13. (1) A member of the board, other than the chief executive officer, the fund manager or a person who is in the full-time employment of the State or a local government body, is appointed on the conditions of service, including conditions relating to the payment of remuneration and allowances for travel and subsistence, as may be prescribed by the Minister upon advice of the fund manager.

(2) Conditions of service determined under subsection (1) may differ according to whether the person concerned serves on the board because of his or her office or on a full-time or part-time basis or in a professional capacity.

(3) Government officials who are members of the board must be paid annual honoraria, prescribed by the Minister for their service on the board and may be compensated for costs related to travel and subsistence in relation to the functions of the board as may be prescribed.

NOTE: The reference to chief executive officer is replaced with a reference to road commissioner.

**Appointment of chief executive officer and fund manager**

14. (1) The board must, subject to the provisions of subsection (3), appoint a-

   (a) chief executive officer; and

   (b) fund manager,

within one month after the date of entry into force of this Act.

(2) For the purpose of subsection (1), the board must invite applications for the posts by publishing an advertisement in two or more newspapers of wide national and international circulation.

(3) Any person-

   (a) appointed to the post of chief executive officer must-
(i) be knowledgeable about road management and operations;
(ii) have at least ten years appropriate experience of which at least five years must have been gained in an executive management capacity;
(iii) be a.... national, unless expressly exempted by the board from this requirement.

(b) appointed to the post of fund manager must-
(i) be a registered as a member of the professional body representing chartered accountants;
(ii) have at least 5 years appropriate experience; and
(iii) be a.... national, unless expressly exempted by the board from this requirement;

(4) The appointment of the persons referred to in subsection (3), is subject to the conclusion of a performance contract between such person and the board.

(5) An appointment in terms of this section is for a period of five years, whereafter the posts must be readvertised in the manner specified in subsection (2).

(6) A serving chief executive officer or fund manager may apply for re-appointment after the expiration of the period of appointment referred to in subsection (5).

(7) A chief executive officer or fund manager holds office on such terms and conditions, including remuneration and allowances as the board determines in writing.

NOTE: Under the alternative option:

- board is replaced by PSIDG;
- chief executive officer is replaced by road commissioner; and

Depending on individual preference, Member States could exclude this section and recruit the road commissioner and fund manager via civil service recruiting procedures. However, it must be emphasized that high calibre personnel should be attracted and that civil service procedures may not necessarily provide the necessary flexibility.

**Functions, powers and duties of the chief executive officer**
15. The chief executive officer manages road operations and procurement on behalf of the agency, subject to directives of the board, and to this end performs the functions listed hereunder and has the power to do all things necessary or convenient to—

(a) oversee the technical operations of the agency related to planning, demand forecasting, construction, upgrading, rehabilitation or maintenance;

(b) undertake procurement and conclude contracts on behalf of the agency subject to approval by the board;

(c) oversee the operation and management of toll roads and monitoring the operations of private toll road operators or persons administering road user charges;

(d) maintain and update the asset register of the agency;

(e) supervise the rationalization of the personnel of the agency in terms of an approved personnel plan and appoint staff of the agency;

(f) co-ordinate between the agency and road traffic and road transport authorities regarding the enforcement of road traffic and transport laws;

(g) supervise communication and marketing campaigns aimed at sensitizing road users and the general public to the role of roads in economic development and the activities of the agency;

(h) supervise law enforcement in respect of roads, road transport or road traffic by agency personnel in terms of an agreement with a law enforcement agency approved by the Minister referred to in section 44;

(i) supervise research with regard to any aspect related to the implementation of this Act, including—

   (i) road classification;

   (ii) harmonization of cross-border road user charging systems;

   (iii) adequacy of road funding in the region;

   (iv) appropriate harmonized technical standards in respect of—

      (aa) infrastructure planning, land use planning and design;

      (bb) materials testing;

      (cc) road and bridge construction;

      (dd) general conditions of contract, and

      (ee) project specifications; and
(j) collaborating with counterpart authorities or agencies in the region to promote regional harmonization and coordinated planning.

Operational plan
16. (1) The chief executive officer must perform his or her functions and duties in terms of an operational plan approved by the board, which must-

   (a) specify a three year roads development programme in accordance with the approved investment and release strategy, including-

      (i) construction programmes for new roads; and

      (ii) maintenance, rehabilitation and upgrading programmes in respect of existing roads;

   (b) identify whether a project forming part of a programme referred to in paragraph (a) will be undertaken by-

      (i) private contractors; or

      (ii) personnel of the agency;

   (c) in the case of a project referred to in paragraph (b)(i), the type of contract which it is envisaged to conclude with a private contractor; and

   (d) specify a procurement schedule; and

   (e) set out a personnel rationalisation strategy.

(2) The chief executive officer must prepare the operational plan in consultation with the fund manager.

Functions and duties of fund manager
17. The fund manager manages the fund on behalf of the agency and subject to the directives of the board and to this end performs the functions listed hereunder and has the power to do all things necessary or convenient to-

   (a) keep such accounting and related records as are necessary to represent fairly the state of affairs and business of the fund and to explain its transactions and financial position;

   (b) keep separate accounts for each of the accounts of the fund;

   (c) prepare accurate financial statements of accounts of the fund and auditing such accounts in respect of every financial year;

   (d) advise the board on the introduction of road user charges, recommending an equitable and transparent charging methodology and proposing a formula for the adjustment of charges;

   (e) advise the board on the need for new financing instruments and the optimal level of fuel levies;
(f) supervise the financial operation of toll roads and monitoring the financial operations of private toll road operators;

(g) inform the board in advance of unforeseen expenses and periodic drops in available funds;

(h) collect monies due or accruing to the fund and deposit or withdraw such monies from accounts held with registered financial institutions;

(i) prosecute claims in favour of the fund or the board, whether under contract or otherwise; and

(j) undertake regular estimates of expenditure requirements and monitor income and expenditure; and

(k) approve salaries, allowances and honoraria payments.

Contents of financial plan

18. The fund manager must perform his or her functions and duties in terms of a financial plan approved by the board, which must-

(a) contain an estimate of revenue and expenditure for the following three financial years;

(b) indicate current sources of revenue and confirmed or projected revenue from such sources;

(c) reflect the state of each account in the fund;

(d) identify options for the diversification of revenue sources, specify new sources of revenue and projected revenue from those sources;

(e) distinguish between operational expenditure of the agency and administrative costs; compare projected revenue for the previous financial year with actual revenue;

(f) assess the adequacy of existing tolls and charges and, if applicable, recommend an adjustment in such tolls or charges.

Submission of plans

19. (1) The chief executive officer and fund manager must respectively submit the draft operational and financial plans to board, no later two months prior to the commencement of the financial year of the agency.

(2) The board must meet, no later than one month prior to the commencement of the financial year of the agency, to consider the draft operational and financial plans and may direct the chief executive officer or fund manager to amend any aspect of the plan to comply with the provisions of this Act.

(3) The chief executive officer or fund manager must submit the amended operational or financial plan to the chairperson for approval and transmission to the Minister.
(4) The Minister may direct that any aspect of the operational or financial plan may be amended to comply with the provisions of this Act.

(5) The operational and financial plan, or a summary thereof, must be published in the Gazette and any newspaper circulating countrywide.

Committees of the board

20. The board may appoint *ad hoc* committees, on the conditions of service determined by the chairperson of the board in consultation with the fund manager, to advise the board with regard to the performance of any of its functions.

Appointment and transfer of staff

21. (1) The chief executive officer may in consultation with the board, appoint such person or persons to staff as he or she deems fit for the proper discharge of the functions of the agency.

(2) Any appointment in terms of this section-

   (a) must be in accordance with the provisions of the operational plan which has been approved by the board; and

   (b) is subject to such conditions of service as the board may approve, upon recommendation of the chief executive officer.

(3) The Minister may, upon agreement with the agency, transfer a person or persons in the employ of the Ministry/Department to the agency subject thereto that-

   (a) the salary and service benefit due to such person by the agency may not be less than those payable or due immediately before the transfer;

   (b) periods of pensionable service in the employ of the State are treated as pensionable service for any scheme which such person may join upon transfer; and

   (c) leave accumulated in the employ of the State is regarded as leave accumulated in the employ of the agency.

Rendering of services outside the Republic

22. (1) The Minister may, with the concurrence of the board, conclude an agreement with his or her counterpart in any other State or territory, whereby the agency may perform any function, which the agency is authorised to perform in the Republic in terms of this Act, in such State or territory.

(2) The agreement referred to in subsection (1) must provide for equitable remuneration to be paid by the government of a State or territory to the agency for the performance of the function.

(3) If the remuneration agreed to by the Minister does not compensate the agency at a reasonable rate of return, the Minister must direct the Permanent / Principal Secretary / Secretary / Director-General to make up the shortfall from the budget of the Department / Ministry.
Annual Report

23. (1) The chief executive officer must, in consultation with the fund manager, submit an annual report to the board that reflects the state of affairs of the agency, its business and financial position and the degree in which its objects have been attained.

(2) The annual report must contain-

(a) an overview of operations of the agency for the year under review;

(b) a report on the extent to which the agency has met its performance targets for the financial year concerned, including-

   (i) progress achieved with the contracting out of agency functions to private contractors; and

   (ii) the rationalization of agency personnel;

(c) the audited financial statements of the agency.

(3) The board must, within three months after the end of the financial year of the agency, submit the approved report to the Minister who must table the report in Parliament-

   (a) within 14 days if Parliament is in ordinary session; or

   (b) within 14 days after the commencement of a session of Parliament if Parliament is not in ordinary session.

Responsibility

24. The chief executive officer and fund manager is not relieved of a duty or responsibility assigned to him or her under this Act by entrusting the duty or responsibility to a subordinate person.

Chapter III

Road Fund

Establishment of Fund

25. There is hereby established a road fund-

   (a) to receive all appropriations and revenue payable to the agency; and

   (b) to be used to finance all expenses arising from this Act.
Fund management

26. (1) The fund is managed through the establishment of-

(a) a user charges account;
(b) an appropriation account;
(c) a loan account;
(d) a capital account;
(e) a fee and fine account.

(2) The-

(a) user charges account which may comprise monies-
   (i) received from road user charges;
   (ii) all toll or other charges payable to the agency;
   (iii) overloading charges; and
   (iv) received from fuel levies.
(b) appropriation account which may comprise monies appropriated by Parliament from time to time to supplement the agency's funds;
(c) loan account which may comprise monies-
   (i) granted to or raised by the agency as loans;
   (ii) received by way of grant, donation or inheritance from any source, whether inside or outside the Republic / Kingdom.
(d) capital account which may comprise monies-
   (i) derived from the sale of the agency's assets;
   (ii) derived from interest on the agency's cash balances or on moneys invested by it; and
(iii) generated through developing, leasing out or otherwise managing its assets within the scope of this Act.

(e) fee and fine account which may comprise monies-

(i) derived from prescribed licence fees or a portion thereof,

(ii) derived from any other levies and any fees, rentals or other moneys charged by and payable to the agency in terms of this Act; and

(iii) fines payable by persons as penalty on their conviction of a prescribed offence.

NOTE: Income from overloading charges will be paid into the user charges account in the event that such charges are paid for on an administrative basis. In the event that overloading is still prosecuted as a crime, it would be more appropriate to include such income in the fee and fine account.

(3) The Minister may by notice in the Gazette, upon recommendation of the board, and after consultation with the Minister of Finance, direct that monies derived from fees charged for the issuing of any licence relating to the motor vehicles, be paid to the fund.

Utilization of fund

27. (1) Monies paid to the fund must be used in accordance with the operational and financial plan as approved by the Minister to meet the expenditure incurred by the agency in connection with its functioning, operations and work in terms of this Act.

(2) Monies received from road user charges and interest earned on the investment of those monies may only be used to defray expenditure relating to the maintenance, rehabilitation or upgrading of existing roads or of roads in respect of which such charges have been imposed.

(3) Monies received as toll or otherwise in connection with toll roads and interest earned on the investment of those moneys may be used only for -

(a) meeting expenditure connected with the acquisition of land for toll roads, any investigations and surveys with regard to toll roads and the planning, designing and construction of, and any other work in connection with, toll roads, including the erection of toll plazas and any facilities in connection therewith;

(b) the maintenance and operation of toll roads and toll plazas and any facilities connected with toll roads and toll plazas; and

(c) paying off any loan mentioned in section 30 and the payment of interest on such a loan.

New funding sources

28. (1) The fund manager must advise the board on the need to develop and implement new financing instruments and or abolish to amend existing financing instruments to ensure that the agency's financing needs are adequately met.
(2) For the purpose of subsection (1), the board must-

(a) review the utility and adequacy of fuel levies;  
(b) consider new financing instruments in the form of road user charges which-
   (i) accurately price road use;  
   (ii) are determined in a transparent and equitable manner; and  
   (iii) are regularly reviewed for accuracy and equity; and  
(c) consider the optimal level of fuel levies in conjunction with income derived from other sources.

(3) If the board intends to impose a road user charge, it must give at least three months notice of its intended action by publishing a notice in the Gazette indicating the proposed level of the charge and inviting public comment.

(4) The board must give due regard to any comment which is received and may, in the light of such comment-

(a) revise a proposed charge; or  
(b) withdraw the proposed charge.

(5) A road user charge is imposed from the date specified by the board by notice in the Gazette.

(6) The Minister may, if he or she is satisfied that a road user charge does not meet all the criteria set out in subsection(2)(b)(i), (ii) or (iii), direct the board to-

(a) amend the charge; or  
(b) withdraw the charge.

(7) The board must give notice of any amendment or withdrawal of a charge in terms of subsection (6) in the Gazette.

Declaration of toll roads and levying and collection of tolls or user charges

29. (1) The agency may, with the concurrence of the Minister-

(a) declare a road or portion thereof to be a toll road, operate such road as a toll road by collecting a toll from road users or authorising any other person to operate such road and collect such toll in terms of an agreement concluded pursuant to the Investment in Transport Act, 1 g., and for such purpose erect, operate and maintain toll plazas on such road; or  
(b) impose a user charge for any purpose and collect such charge from road users or authorise any other person to collect such charge in the manner which the agency deems fit.
(2) The agency may not act in terms of subsection (1), without prior publication of a notice in the Gazette which must invite public comment and specify-

(a) in the case of a toll road-

(i) the portion of the road to be tolled;
(ii) the amount or amounts of the toll;
(iii) the classes of persons or vehicles to be tolled with reference to the amount of the toll;
(iv) the classes of persons of vehicles, if any, to be exempted from toll;
(v) the hours, if any, during which no toll will be levied;
(vi) the approximate location of toll plazas; and
(vii) the date on which the levying of toll is to commence; and

(b) in the case of a user charge-

(i) the amount or amounts of the charge;
(ii) the classes of persons or vehicles to be charged with reference to the amount of the charge;
(iii) the classes of persons of vehicles, if any, to be exempted from the charge;
(iv) the manner in which the charge is to be paid; and
(v) the date on which the levying of the charge is to commence.

(3) A notice referred to in subsection (2), must be published at least three months prior to date on which the levying of tolls or charges is to commence and allow not less than 30 days for comment.

(4) The board must review any comment which is received and report to the Minister on-

(a) the manner in which comment has been accommodated; or

(b) if comment has not been accommodated, specify the reason therefor.

(5) The Minister may, if he or she is satisfied that there are reasonable grounds to do so, direct the board to amend a notice published in terms of this section with regard to any matter listed in subsection (2).

(6) The board may at any time amend a notice published in term of this section.

(7) The provisions of subsections (3), (4) and (5) apply to any amended notice.

Loans and Government guarantees for loans
30. (1) The Minister may grant loans to the agency from moneys made available by Parliament for that purpose.

(2) The agency will pay interest on such a loan at a rate determined by the Minister acting with the agreement of the Minister of Finance, and must repay the loan in the installments and within the period determined by the Minister.

(3) The agency, with the written permission of the Minister granted with the agreement of the Minister of Finance, may raise loans from any other source to finance any expenditure that may be incurred by the agency during any financial year for the purposes of the planning, design, construction, maintenance or rehabilitation of any road.

(4) The permission may be granted subject to any conditions determined by the Minister acting with the agreement of the Minister of Finance.

(5) The Minister acting with the agreement of the Minister of Finance, may guarantee any loan raised by the agency in terms of subsection (2) on behalf of the State.

Use of fund monies

31. (1) Payment from fund monies must be made only in respect of-

(a) authorised transfer payments;

(b) services rendered to the State;

(c) value received;

(d) performance of contractual obligations;

(e) authorised advances.

(2) Where R will be to the advantage of road network development in the country or the region, the fund manager may approve that a payment be made before it is due.
32. In addition to the agency's main powers under section 8, the agency may-

(1) at the request of a second or third tier government, perform any work in connection with any road under the control if such government, or to have it done under its supervision, for the account of that government and charge a fee for such service;

(2) provide, establish, erect and maintain facilities on roads for the convenience and safety of road users;

(3) charge a levy, fee or rent for any authorisation, approval or permission that may be granted or given by the agency to any person from time to time in terms of section 39 for the provision, construction, erection, establishment, carrying on or operation on, over or underneath any road, of anything provided for in the section concerned;

(4) fence any mad;

(5) plant trees, stubs, other plants or grass, and protect or promote any vegetation, alongside a road, and to take any other steps for the convenience of users of a road or the appearance of a road or in order to prevent soil erosion on a road or to prevent it arising as a result of the construction of a road;

(6) establish and operate an information and management system concerning roads;

(7) use any portion of a road that is not immediately required for traffic purposes, for any purposes which the agency considers fit, subject to this Act;

(8) exploit, for gain or reward, any immovable property owned by or under the control of the agency (except roads), that is not used or immediately required for use in connection with the agency's functions in terms of this Act;

(9) take out insurance against any risk, loss or damage connected with the exercise of its powers or the performance of its functions or duties in terms of this Act;

(10) liaise and exchange information, knowledge and expertise with the official bodies or authorities entrusted with control over roads of a national or international character in other countries, and to participate in the conferences, seminars and workshops of those bodies or authorities and in the activities of any multinational or international association of those bodies or authorities;

(11) grant a bursary, loan or subsidy to any person for study or research in any subject or field in connection with roads, or grant a subsidy to any institution or body engaged in research of...
that nature, if the study or research will help it in performing its functions in terms of this Act;

(12) exercise any power and perform any function conferred in terms of this Act or by any other Act; and

(13) do anything else which is reasonably ancillary to any of its functions in terms of this Act.

Expropriation of land for purposes of road

33. (1) Subject to subsection (2) and to the obligation to pay compensation, the agency may, if it reasonably requires-

(a) any land for a road or for works or other purposes connected with a road, including any access road, the acquisition, excavation, mining or treatment of gravel, stone, sand, clay, water or any other material or substance, the accommodation of road building staff and the storage or maintenance of any plant, vehicles, machines, equipment, tools, stores or material, expropriate such land;

(b) take gravel, stone, sand, clay, water or any other material or substance on or in land for the construction of a road or for works or any of the purposes mentioned in paragraph (a); and

(c) the right to use land temporarily for any of the purposes referred to in paragraph (a), take such right.

(2) The agency may not exercise a power in terms of subsection (1) unless the agency is unable to acquire the land or anything mentioned in paragraph (b) of that subsection, or the right to use the land temporarily, by agreement with the owner of the land or the holder of any relevant rights in respect of the land, as the case may be.

(3) Subject to the obligation to pay compensation, and if satisfied on reasonable grounds that any land is or will be divided by a road contemplated in subsection (1 Xa) in such a manner that the land or any part of it is or will be useless to its owner, the agency may expropriate that land or the relevant part thereof.

(4) Where the agency expropriates any land in terms of subsection (1) or (3), the agency becomes the owner thereof on the date of expropriation of the land concerned.

State land may be made available to agency for purposes of road

34. (1) On request made by the agency in consultation with the Minister, the Minister of Public Works may make any State land available for transfer to the agency for the purposes of a road at a fair price.

(2) For the purpose of subsection (1), a fair price is determined with reference to the criteria laid down in legislation relating to expropriation.

Entry upon land

35. (1) Subject to subsections (2), (3) and (4), any employee of the agency or other person authorised in writing thereto by the chief executive officer (hereafter called a delegate), may, with the permission of
the owner of any land, enter upon that land with the necessary workers, machines, vehicles, equipment, tools, instruments or materials to perform or carry out on, below the surface of or in connection with that land, any investigation, survey, observation or other act necessary for or in connection with the exercise or performance of a power, function or duty imposed on the agency in terms of this Act.

(2) Where the owner of any land has refused permission to enter upon such land, the High Court within whose area of jurisdiction that land is situated, may on application by the agency and subject to subsection (3), issue an order authorising entry upon such land if satisfied that entry is reasonably necessary and justifiable in the circumstances.

(3) The provisions of subsection (2) may not be applied to gain access to any dwelling or any other building on the land in use for residential purposes.

(4) A court order issued in terms of subsection (2) must specify the purpose for which entry upon the land is authorised, the acts that may be performed or carried out on the land in connection with that purpose and the persons by whom, the means whereby or the manner in which they are to be performed, and may stipulate any conditions with regard thereto.

(5) The agency must repair or pay for any damage arising from any act performed by an employee or delegate in term of this section.

Access to and egress from roads

36. (1) No person may-

(a) take a vehicle onto a road except at an entrance provided for that purpose;

(b) take a vehicle off a road except at an exit provided for that purpose;

(c) enter a road which is fenced, except at an entrance provided for that purpose;

(d) leave a road which is fenced, except at an exit provided for that purpose.

(2) Only the chief executive officer or a person acting on his or her written authority may provide or authorise an entrance to or an exit from a road.

(3) For the purposes of this section, 'entrance" and 'exit, with regard to a road, means any road (whether a public road or not), bridge, subway, gate, sty, passage or other means by which the road can be entered or left, respectively.

(4) A person is guilty of an offence-

(a) upon contravening the provisions of subsection (1), and liable on conviction to a term of imprisonment not longer than three months, or a fine;

(b) when providing or making an entrance to or exit from a road without the agency's written authorisation in terms of subsection (2), and liable on conviction to a term of imprisonment not longer than six months, or a fine, or to both the term of imprisonment and the fine.
Closing or diverting road

37. (1) The agency may close a road to traffic or divert the roadway of a road whenever in its opinion it is necessary or desirable to do so.

(2) Any person who without the permission of the agency uses a road so closed to traffic, is guilty of an offence and liable on conviction to a term of imprisonment not longer than three months, or a fine, or to both the term of imprisonment and the fine.

(3) The court convicting a person of an offence contemplated in subsection (2) may, in addition to imposing a sentence on such a person, order that person to pay to the agency an amount which, in the court's opinion, is equal to the amount of the damage caused.

(4) An order referred to in subsection (3) has the force of a civil judgement and may be enforced in the same manner as a civil judgement.

(5) The owners or occupiers of land adjoining any road must-

(a) take all measures on their land that are reasonably necessary to prevent the occurrence of any damage to the road concerned, including any measures as prescribed from time to time for that purpose;

(t) refrain from doing or permitting anything on or below the surface of that land which is likely to cause damage to that road.

(6) The owner or occupier of any land adjoining a road will be liable for any damage to the road which was or reasonably should have been foreseen and which could have been avoided had the owner or occupier taken measures in compliance with subsection (5)(a), or refrained in compliance with subsection (5)(b) from doing or permitting anything contemplated in the latter subsection.

(7) For the purposes of ensuring compliance with subsection (5), the agency by notice in writing may demand that the owner or occupier of any land adjoining a road does the following to prevent the occurrence of any damage which, in the agency’s opinion, is likely to be caused to a road:

(a) takes on that land the measures, specified in the notice, within the period mentioned therein, or allows the agency to take those measures itself, or

(b) forthwith stops doing or permitting anything particularly specified in the notice, at any place, on or below the surface of that land, specified in the notice.

(8) The demand made in the notice may amongst others order the removal, filling in, alteration, relocation or establishment of any dam, canal, trench, wall, sluice, pipe, excavation, structure or other works, or the cessation of such an act, on the land.

(9) If the owner or occupier of the land fails or refuses to comply with that notice, the agency may apply to the High Court within whose area of jurisdiction that land is situated for an order directing the owner or occupier-

(a) to take the measures specified in the notice, on that land, or to allow the agency to do so itself; or
(b) (as the case may be) to stop doing or permitting the thing so specified at the specified place on that land.

(10) The court may order that all or any of the measures demanded by the agency or any other measures that the court considers fit, be taken by the owner or occupier, or, as the case may be, that the owner or occupier ceases doing or permitting all or any of the things complained of, if satisfied-

   (a) that due to the circumstances prevailing on the particular land, damage is likely to be caused to the road in question; and

   (b) that the damage to that road is likely to be avoided by taking those measures or by ceasing to do or to permit those things.

(11) The court may order either of the parties to bear the costs of complying with that order, depending on whatever may be fair and just in the circumstances, and may make any order as to the costs of the proceedings that it considers fit.

(12) In any deserving case the agency, in its discretion and without prejudice to any of its rights, may with the Minister's approval pay the whole or any part of the costs incurred by the owner or occupier of land in complying with any notice issued under subsection (7).

**Disposing of roads’ storm-water**

38. (1) The agency may divert storm-water from or under a road onto any land but must pay compensation for any damage caused by the diversion of the storm-water except in the circumstances mentioned in subsection (2).

(2) Where a township is established on land adjoining a road, the person establishing the township must receive and dispose of the storm water discharged or diverted from the road, and the agency will not be liable for any damage caused in the township by the storm-water.

**Structures and other works on, over or below roads or certain other land**

39. (1) Except as provided in subsection (2), no person may do any of the following things without the agency's written permission or contrary to that permission, namely-

   (a) on or over, or below the surface of, a road or land in a building restriction area, erect, construct or lay, or establish any structure or other thing (including anything which is attached to the land on which it stands even though it does not form part of that land);

   (b) make any structural alteration or addition to a structure or that other thing situated on or over, or below the surface of, a road or land in a building restriction area;
(c) give permission for erecting, constructing, laying or establishing any structure or that other thing on or over, or below the surface of, a road or land in a building restriction area, or for any structural alteration or addition to any structure or other thing so situated.

(2) The agency, in its discretion, may give or refuse its permission in terms of subsection (1).

(3) When giving permission, the agency may prescribe-

(a) the specifications to which the structure, other thing, alteration or addition for which permission is asked, must comply;

(b) the manner and circumstances in which, the place where and the conditions on which the structure, other thing, alteration or addition may be erected, constructed, laid, established or made; and

(c) the obligations to be fulfilled by the owner of the land in question of the structure, other thing, alteration or addition is erected, constructed, laid, established or made.

(4) Where a person without the permission required by subsection (1) or contrary to any permission given thereunder, has erected, constructed, laid or established a structure or other thing or has made a structural alteration or addition to a structure or other thing or given permission therefor, the agency by notice in writing may direct that person to remove the unauthorised structure, other thing, alteration or addition within a reasonable period which must be stated in the notice but which may not be shorter than 30 clays calculated from the date of the notice.

(5) If the person to whom a notice has been issued in terms of subsection (4), fails to remove the structure, other thing, alteration or addition mentioned in the notice, within the period stated therein, it may be removed by the agency itself which may recover the costs of the removal from that person.

(6) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a term of imprisonment not longer than one year, or a fine, or to both the term of imprisonment and the fine.

Advertisements on or visible from roads

40. (1) Except as provided in subsection (2), no person may-

(a) display an advertisement on a road, or permit R to be so displayed; or

(b) display, outside an urban area, any advertisement visible from a road, or permit any advertisement which is so visible, to be so displayed.

(2) Subsection (1) does not apply to the displaying of any advertisement complying with the prescribed requirements as to the nature, contents or size or such an advertisement or the time, manner or place of its display.

(3) Any person who displays an advertisement contrary to the provisions of this section who has been directed by the agency by notice in writing to remove that advertisement, must do so within the period stated in the notice which may not be shorter than 14 days.
(4) If the person to whom a notice in terms of subsection (3) is directed, fails to remove the advertisement specified in the notice within the period stated therein, it may be removed by the agency itself which may recover the costs of the removal from that person.

(5) Any person who contravenes subsection (1), is guilty of an offence and liable on conviction to a term of imprisonment not longer than six months, or a fine.

**Disused vehicles or machinery and other rubbish on or near roads**

41. (1) No person may-

(a) deposit or leave a disused vehicle or machine or a disused part of a vehicle or machine, or any rubbish or other refuse on a road;

(b) without the agency's written permission or contrary to any condition imposed by the agency and set out in the written permission, deposit or leave, any disused vehicle, machine or part, or any rubbish or other refuse on land outside an urban area and within 150 metres from the boundary of a road.

(2) The agency may remove a disused vehicle or machine or a disused part of a vehicle or machine, or any rubbish or other refuse, found on a road, and may recover the costs of the removal from the person who deposited or left the disused vehicle, machine, part, rubbish or other refuse on that road.

(3) If, on any land mentioned in subsection (1)(b), there is found any disused vehicle or machine or disused part of a vehicle or machine, or any rubbish or other refuse, and the person who deposited or left it there or any person entitled to remove it, has been directed by the agency by notice in writing to remove it-

(a) such person must remove the disused vehicle, machine or part or the rubbish or other refuse from the land or take those necessary steps within the period stated in the notice, except if-

(i) that person produces a written permission of the agency authorising the presence of that vehicle, machine, part, rubbish or other refuse on that land under the circumstances in question; or

(ii) in the case of a person so entitled, that person satisfies the agency of not having deposited or left the vehicle, machine, part, rubbish or other refuse on that land and not having permitted its being deposited or left there and, where it was deposited or left there by the agent or employee of the person so entitled, of not having been aware of that fact.

(b) the agency, if the vehicle, machine, part, rubbish or other refuse has not been removed within the period stated in the notice and if satisfied that no person holds a written permission of the agency in terms of subsection (3)(a)(i), may remove the vehicle, machine, part, rubbish or other refuse from that land and may recover the costs of the removal or of those steps from the person who in terms of that subsection was under a duty to take the removal or take the necessary steps.
(4) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a term of imprisonment not longer than six months, or a fine, or to both the term of imprisonment and the fine.

Trading on road or in building restriction area

42. (1) Except as provided in subsection (2), no person may without the agency's written permission or contrary to the terms of the written permission, carry on any trade or expose, offer or manufacture for sale any goods on a road or in a building restriction area.

(2) Subsection (1) does not apply to any person who, after the date on which a road is declared continues, on land forming part of the road or building restriction area, any business or undertaking which was carried on or conducted on that land immediately before that date, unless that person, by notice in writing, has been directed by the agency to discontinue the business or undertaking before a date stated in the notice, and that date has arrived.

(3) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a term of imprisonment not longer than six months, or a fine, or to both the term of imprisonment and the fine.

Agency may pay Compensation for damage or loss due to Its activities

43. The agency, at its discretion and on any conditions it considers fit, may -

(a) pay the costs or part of the costs incurred by an authority in connection with a road or may have become necessary as a result of the construction, maintenance or rehabilitation of a road;

(b) pay an amount to any person for any damage, loss or inconvenience which, in the opinion of the agency, has been or will be suffered by the person as a result of the exercise or performance of any of the powers, functions or duties entrusted to the agency or any other person by or in terms of this Act, and for which no compensation is payable in terms of this Act.

Law enforcement on roads

44. (1) The agency may authorise any of its employees to take steps on a road or any other property of the agency, in the manner and on the conditions as prescribed, in order to prevent any offences created by this Act, any other contraventions thereof and any offences in terms of the road traffic and the road safety laws being committed on the road or other property.

(2) Such an authorised employee will have the powers of arrest and detention conferred on a peace officer in terms of applicable criminal procedure legislation.
Chapter V

General Provisions

Regulations

45. The Minister, after consultation with the agency, may make regulations with reference to-

(a) matters that will promote the objects of this Act;

(b) anything which in terms of this Act may or must be prescribed or may or must be governed, be provided for, determined or specified by regulation.

Commencement

46. This Act is called the Roads Act, 1 g., and comes into force on a date to be fixed by the President in the Gazette.