This document has four parts. The first part provides examples of the way selected countries have set up road funds under existing legislation. The second provides examples of the documentation used to set up a road fund under new legislation. The third part deals with the special case where a board is set up to oversee management of an existing road fund. The final part provides samples of miscellaneous documents used when setting up a road fund (e.g., sample letters inviting nominations for the road fund board and sample letter inviting bids from local accountants/banks to act as interim secretariat for the road fund).

Part I: Road Funds Set Up Under Existing Legislation
1. Legal Notice and Regulations Used to Set Up a Road Fund - Lesotho
2. Gazette Notice and Statutory Instrument Defining the Powers and Functions of the National Roads Board Established to Manage the Road Fund - Zambia
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Part II: Road Funds Set Up Under New Legislation
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3. Road Fund Administration Bill - Namibia
4. Legislation and Regulations Setting up a Road Fund Administration - Malawi
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7. Standard Format for Setting Up a Road Fund Under New Legislation

Part III: Road Funds Managed Through An Advisory Board
1. Advisory Board to Oversee Management of the Road Fund - Romania

Part IV: Miscellaneous Documents
1. Draft letter sent out to invite organizations to nominate members to sit on the road fund Board
2. Draft letter inviting local accounting firms/banks to put forward proposals to act as Secretariat for the Road Fund
3. Draft statement to assist prospective accounting firms to put together their proposal to act as a secretariat to the Roads Board
SETTING UP A ROAD FUND

PART I: ROAD FUNDS SET UP UNDER EXISTING LEGISLATION

1. Legal Notice and Regulations Used to Set Up a Road Fund - Lesotho

[This example is taken from Lesotho and is one of the best examples available, possibly because the Ministry of Finance strongly supported the concept. The road fund was set up under the existing Finance Act and was accompanied by a legal notice published in the government Gazette spelling out the financial regulations governing management of the road fund. The names of the members of the road fund board were also published in the Gazette.]

LEGAL NOTICE NO. 179 OF 1995
Finance (Roads Fund) Notice, 1995

In exercise of the powers conferred on me by Section 16A of the Finance Order, 1988, I

DR. MOKEITSI SENAOANA

Minister of Finance and Economic Planning make the following Notice:

Citation and Commencement

1. This Notice may be cited as the Finance (Roads Fund) Notice 1995 and shall come into operation on the date of its publication in the Gazette.

Establishment of Special Fund

2. There is established a Special Fund to be known as the ROADS RELIEF FUND.

Dr. M. Senaoana

Minister of Finance and Economic Planning

LEGAL NOTICE NO. 16 of 1996
FINANCE (ROADS FUND) REGULATIONS 1996

In exercise of the powers conferred on me by section 18A of the Finance Order 1988, I

DR. MOKEITSI SENAOANA

Minister of Finance and Economic Planning make the following Regulations:

Citation and commencement

1. These regulations may be cited as the Finance (Roads Fund) Regulations 1996 and shall come into operation on the date of publication in the Gazette.
Interpretation

2. In these regulations, unless the context otherwise requires,

“Appointed member” means a member of the Board who is appointed by the Minister under regulation 7 (1)(c);

“Board” means the board constituted under regulation 7;

“Secretary” means the Executive Secretary of the Fund appointed under regulation 12;

“Fund” means the Roads Fund established by the Finance (Roads Fund) Notice No. 179 of 1995;

“Minister” means the minister responsible for Finance.

Purpose of the Fund

3. The purpose of the Fund is to finance,

(a) routine and periodic maintenance of all roads in Lesotho, including those under the jurisdiction of the Works and of the Ministry of Local Government;

(b) on a cost share basis, Urban Council roads and the unclassified roads under the jurisdiction of Development Councils; and

(c) road upgrading, maintenance, rehabilitation, new works and road safety projects.

Receipts into the Fund

4. (1) There shall be paid into the Fund,

(a) road toll-gate fees;

(b) border fees/short term Southern African Customs Union permits;

(c) license fees on motor vehicles;

(d) road maintenance levy on petrol and diesel;

(e) fines on overloaded vehicles;

(f) any other road user charges or donor funding from donors that may from time to time be allocated to the Fund; and

(g) any sums appropriated to the Fund.

(2) The Board shall take such steps as necessary to ensure that all funds payable to the Fund are collected and deposited into the Fund account.
Disbursements from the Fund

5. Moneys shall be paid from the Fund for,
   (a) the purpose of defraying expenses incurred in undertaking routine and periodic maintenance of roads;
   (b) its administrative costs; and
   (c) financing road upgrading, rehabilitating new road works and road safety.

Administration and Management of the Fund

6. The Fund shall be administered by the Board.

Composition of the Board

7. (1) There shall be a Board comprising,
   (a) the Chairman of the Board;
   (b) six ex-officio members, each representing the following Ministries:
      (i) Ministry of Finance,
      (ii) Ministry of Works,
      (iii) Ministry of Transport and Communications,
      (iv) Ministry of Local Government,
      (v) Ministry of Natural Resources, and
      (vi) Ministry of Planning.
   (c) Five non-governmental members, each representing one of the following organizations:
      (i) the Lesotho Chamber of Commerce and Industry, nominated by the Chairman of the organization,
      (ii) the Lesotho Bus and Mini-bus Operators Association, nominated by the Chairman of the association,
      (iii) the Lesotho Transport Association, nominated by the Chairman of the association,
      (iv) the Lesotho Architects, Engineers and Surveyors Association, nominated by the Chairman of the association, and
      (v) the Law Society of Lesotho, nominated by the Chairman of the association.
(2) The Chairman will be appointed by the Minister. The ex-officio members shall not be officers holding offices below the level of Director or equivalent and shall be appointed by the Minister.

(3) The Minister shall cause the names of the Board appointed under sub-regulation (1)(c) to be published in the Gazette.

Tenure of office

8. (1) An appointed member,
   (a) shall hold office for not more than 2 years from the date of appointment unless that officer resigns or vacates office under sub-regulation (2);
   (b) may be re-appointed at the conclusion of his term of office;
   (c) may resign by writing under his hand addressed to the Minister.

(2) An appointed member shall vacate his office as a member,
   (a) if he has been absent from 3 consecutive meetings of the Board without the permission of the chairman;
   (b) if he is, in the opinion of the Minister, unable or unfit to discharge the functions of a member of the Board.

(3) Where an appointed member has resigned under sub-regulation (1)(c) or has vacated his office the Minister shall, by notice in the Gazette, fill that vacancy with a new appointment in accordance with regulation 7(c) and the person so appointed shall hold office for the unexpired term of his predecessor.

(4) A member may be paid such allowances and expenses as the Minister may from time to time determine.

Disclosure of interest

9. If a member of the Board acquires any pecuniary interest, direct or indirect, in any contract proposed contract or in any other matter in which private interests conflict the duties as a member and which is the subject of consideration by the Board, shall, as soon as is aware of the interest in the contract or proposed contract or any other matter, disclose such facts to the Board.

Meetings of the Board

10. (1) The Board shall meet at such times and at such places as the Chairman may decide. The Board shall meet at least once per month for regular Board meetings.

(2) The Chairman shall at the written request of not less than four members of the Board convene a special meeting of the Board to transact any extraordinary business on a date specified in the request. A written notice shall be addressed and sent to the members at least three days prior to the date of the meeting.
(3) The Chairman shall preside at each meeting of the Board. Where the Chairman is absent, the members present shall appoint a Chairman to preside in the meeting.

(4) The quorum necessary for the transaction of the business shall be a majority of the members present at all meetings of the Board.

(5) The Board decisions shall be taken by the majority vote and, when the votes are equal, the Chairman has a casting vote, with dissenting members having the right to have their views recorded in the minutes.

(6) The minutes of every meeting of the Board shall be recorded in a register by the Secretary of the Board and signed by the Chairman of the meeting and the Secretary.

(7) The Board may co-opt non-voting observers at any of its meetings, as and when required.

(8) The Board shall appoint such study groups or committees as may be necessary for the proper discharge of the functions of the Board consisting of some members and such other persons with prescribed qualifications, and define the objectives of such groups or committees.

(9) Members of the Board and such other persons appointed to study groups or committees shall be paid such remuneration as may be determined by the Minister.

(10) The board may co-opt any person to advise it during its deliberations.

(11) Subject to this regulation, the board shall regulate its own procedure.

**Functions of the Board**

The functions of the Board are,

(a) to administer and manage the Fund;

(b) to coordinate and ensure total and timely accountability of all funding allocated to the Fund;

(c) to improve arrangements for collecting road user charges to minimize avoidance and evasion;

(d) to allocate sufficient funds for maintenance and to recommend to the Minister the level of road user charges required to finance the recommended road maintenance program;

(e) to institute an integrated and coordinated approach to planning of road works in Lesotho by establishing the form and content of the Annual Road.
(f) to provide guidance and establish procedures to be followed in the preparation of the Road Expenditure Program by the various road agencies;

(g) to establish the allocation criteria to divide monies between the various categories of roads;

(h) to review and approve the Annual Road Program;

(i) to establish procedures for disbursing funds for the Annual Road Program;

(j) to ensure transparency and accountability in the disbursement of the funds by, among other things, publishing an annual report;

(k) to prepare and publish an annual report.

Secretary

12. (1) The Minister shall, after consultation with the Minister responsible for the Public Service, by notice in the Gazette, appoint a senior public officer to be Secretary of the Board.

(2) The Secretary shall be the chief executive and accounting officer of the Fund.

(3) The Secretary shall perform such duties as are conferred on him by or under these regulations.

(4) The Secretary shall attend meetings of the board but shall have no vote at such meetings.

Secretariat of the Fund

13. (1) There shall be a Secretariat of the Fund consisting of,

   (a) the Secretary of the Board;

   (b) four qualified officers in personnel, accounting and financial management;

   (c) such number of employees as may be seconded or otherwise appointed to the secretariat.

(2) The Fund may grant pensions, gratuities or retiring benefits to the officers and employees of the Secretariat and require them to contribute to any pension, provident fund or superannuation scheme.

(3) If an officer holding a pensionable office in the public service is seconded to the Secretariat, the period during which he serves with the Secretariat shall, for the purpose of computation of time and amount of pension payable to him in respect of his service as a public officer, be deemed to be service in a pensionable office.
Functions of Secretariat

14.  (1) The Secretariat shall be responsible for the management of the Fund in accordance with the decisions of the Board.

(2) Without prejudice to the generality of sub-regulation (1), the Secretariat shall be responsible to-

   (a) keep proper accounts and records in respect of the Fund;

   (b) maintain a bank account in which shall be recorded all receipts into the Fund and all disbursement from the Fund;

   (c) prepare and submit for audit in respect of each financial year a balance sheet, a statement of income and expenditure, and a statement of cash flow in such forms and manners as the Accountant-General may prescribe;

   (d) prepare the Annual Report in such form and with such content as may be prescribed by the Board; and

   (e) arrange the business for meetings of the Board.

Annual Road and Expenditure Programme

15.  (1) The Board shall review the Annual Road Expenditure Program for that year at least three months before the new fiscal year.

(2) The Annual Road Program shall be in such form and containing such details as may be prescribed by the Board, and shall be prepared by the road agencies responsible for maintaining the road network funded by the Fund.

(3) The Annual Expenditure Program shall allocate the revenues of the Road Fund to various categories of roads for the year, following the allocation criteria prescribed by the Board and such criteria may be based on the condition of the road network, the type of maintenance required (whether routine or periodic), the length of the road network, and the volume of traffic.

(4) After consultation with the Minister of Finance the Board shall review the Annual Expenditure Program to be financed by the Fund and decide on,

   (a) the affordability of the overall program; and

   (b) the appropriateness of the amounts allocated for each class of road.

(5) The Board shall transmit to the Minister of Works and to the Minister of Finance the approved Annual Expenditure Program.

(6) The Board may recommend to the Minister of Finance any increase in the level of road user charges required to finance the approved Annual Expenditure.
Annual Report and Accounts

16. (1) As soon as possible after the close of the financial year but not later than 3 months thereafter, the Board shall submit to the Minister an annual report and audited accounts of the Fund comprising,

(a) a report on the activities of the Road Fund during the preceding year;
(b) a profit and loss account for the period of the financial year, and
(c) a balance sheet showing the assets and liabilities of the Fund at the close of the financial year.

(2) A copy of the annual report and audited accounts of the Fund shall be submitted by the Minister to the Legislature at the earliest.

Audit of Accounts

17. (1) The accounts of the Fund shall be audited annually by the Auditor-General or auditors appointed by him.

(2) The auditors shall complete their audit of the accounts of the Fund within 3 months of the end of each financial year and shall include in their report assessments relating to the achievement of the objectives of the Fund, compliance with the policies, procedures and criteria established by the Board, and the effectiveness of the administration of the Fund.

(3) The Board shall submit the auditor’s report and its comments to the Minister within one month from the date of its completion.

Power of the Minister in Relation to the Board

18. The Minister may give to the Board general or specific directions in writing as to the performance of its functions and the board shall give effect to such directions.

MOEKETSI SENANOANA

MINISTER OF FINANCE AND ECONOMIC PLANNING

??????

MINISTER OF FINANCE AND ECONOMIC PLANNING

2. Gazette Notice and Statutory Instrument Defining the Powers and Functions of the National Roads Board Established to Manage the Road Fund - Zambia

[This example comes from Zambia. It is an unusual case. The special account (road fund) was originally set up under the Finance Act during the 1970s when the government intended to introduce road tolls. The tolls were going to be deposited into this account. The government decided not to go ahead with road tolls and the account was left dormant. When they decided]
in 1994 to establish a road fund, the Ministry of Finance simply used the existing account already opened under the Finance Act. The Board to manage the road fund was set up under the existing Roads and Roads Traffic Act (Laws, Volume XV, Cap 766) which gave the Minister powers to establish a road board by notice in the Gazette. The Act also provided for the board to “have such powers, duties and functions as may be prescribed”. So, with the special account already created, a notice was published in the Gazette establishing the National Roads Board, and a Statutory Instrument was published defining the powers and functions of the board. The Statutory Instrument is not a particularly good example. Item 4, in particular, gives the board powers well beyond those normally associated with managing a road fund. The third Statutory Instrument passed in 1997, rectified one of the defects built into the earlier SI and gives the National Roads Board powers to hire and fire its own staff.

GAZETTE NOTICE NO. 214 OF 1994

The Roads and Roads Traffic Act
(Laws, Volume XV, Cap. 766)
Constitution of the National Roads Board

1. IT IS HEREBY NOTIFIED for public information that in exercise of the powers conferred on the Minister by section fifty-five of the Roads and Road Traffic Act the National Roads Board (hereinafter referred to as the “Board”) is hereby constituted for the purpose of administering and managing the Road Fund set up under Statutory Instrument No. 42 of 1994 and advising the Minister on any matter in connection therewith.

Composition of Board

2. The Board shall consist of–

   (a) seven members being nominees of each of the following:

    (i) Engineering Institution of Zambia;
    (ii) Zambia Chamber of Commerce and Industries;
    (iii) Chartered Institute of Transport;
    (iv) Copperbelt University;
    (v) Automobile Associations;
    (vi) Farmer; and
    (vii) Transporters Association (UTTA), Feedhaul and TAZA; and

   (b) five ex-officio members being nominees of the Ministries, responsible for the following:

    (i) Communications and Transport;
    (ii) Works and Supply;
    (iii) Local Government and Housing;
    (iv) National Commission for Development Planning; and
(v) Finance.

Chairman of the Board

3. There shall be a Chairman and Vice-Chairman of the Board, who shall be elected by the Board from amongst the members of the Board.

Proceedings of the Board

4. (1) The Board shall meet at least once every two months at such time and place as the Chairman may determine.

(2) The Chairman may at any time, and shall at the request of the Minister or of not less than one half the members call a special meeting of the Board.

(3) All decisions of the Board shall be taken by means of a resolution passed by a majority of the members present and voting at a meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote.

Staff of the Board

5. The Board shall, in the discharge of its functions, be assisted by staff seconded from the Ministries of Communication and Transport; Works and Supply; Local Government and Housing; Finance and National Commission for Development Planning and shall include—

(a) highway transport engineers;

(b) road engineers or inspectors or both;

(c) budget analysts; and

(d) accountants.

LUSAKA
22nd February, 1994

W. HARRINGTON
Minister of Communications and Transport
GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT No. 42 OF 1994

The Roads and Road Traffic Act
(Laws, Volume XV, Cap. 766)

The Roads and Road Traffic (National Roads Board)
(Powers and Functions) Order, 1994

IN EXERCISE of the powers contained in section sixty-two of the Roads and Road Traffic Act, the following Order is hereby made:

1. This Order may be cited as the Roads and Road Traffic (National Roads Board) (Powers and Functions) Order, 1994.

2. In this Order, unless the context otherwise requires —

   “Board” means the National Roads Board constituted by the Minister under section fifty-five of the Act;

   “highway authority” shall have the same meaning as contained in the Act;

   “Ministers” means the Ministers responsible for Communications and Transport, Works and Supply and Local Government and Housing.

3. (1) The Fund styled the Road Fund established by the Permanent Secretary of the Ministry of Finance under paragraph (c) of subsection (1) of section eight of the Finance (Control and Management) Act shall be vested in the Board for the purpose of road maintenance and rehabilitation.

   (2) The Road Fund shall consist of —

   (a) fuel levy;
   (b) such sums as may be appropriated by Parliament for the purposes of the Board;
   (c) donor funding;
   (d) SAP road fund; and
   (e) road user levies including tariffs, taxes and tolls as may be recommended by the Board.

4. For the purpose of performing its functions, the Board shall have the power to —

   (a) classify, reclassify, close or divert any road;
   (b) accept or reject proposals and programmes from road agencies;
   (c) construct, maintain and control storm-water drains;
   (d) control roads and traffic in the country during maintenance and construction of roads;
(e) place temporary and permanent traffic signs;
(f) remove and alter road advertisements;
(g) enter upon land to carryout investigations connected with siting, diverting, maintenance and construction of roads;
(h) recommend the reservation of land for proposed roads;
(i) prohibit any unauthorized acts that may lead to damage of existing roads in State Lands and Reserves;
(j) park vehicles, erect huts on private land during construction, maintenance and investigation;
(k) regulate undertakers' work across, on and within road reserves;
(l) prevent damage to roads;
(m) provide footpaths, cycle tracks and similar passageways; and
(n) undertake ancillary works.

5. The functions of the Board shall be to—

(a) administer and manage the Road Fund;
(b) prepare and publish audited annual accounts of the Road Fund;
(c) recommend, to the Ministers, additional fuel levy and other road user charges and tariffs as required;
(d) recommend projects for donor funding to the Ministers;
(e) allocate resources for road maintenance and rehabilitation for various classes of roads as may be determined, by the Ministers;
(f) recommend funding for development of new roads;
(g) provide guidance and technical assistance to various road agencies;
(h) receive and consider reports from road agencies on their activities and prepare quarterly and consolidated annual reports;
(i) prepare and award contracts, certification and payments, and advise the Ministers accordingly;
(j) review design standards and classification of roads and traffic signs for approval by the Ministers;
(k) prepare and review terms of reference and guidelines for the various Road Authorities and budget guidelines;
(l) recommend to the Ministers the granting of highway authorityship to any person or institution;
(m) plan, manage and coordinate the road network in the country;
(n) review from time to time the status of roads agencies and recommend appropriate action to the Ministers; and
(o) make recommendations in relation to the siting of buildings on roadsides.
IN EXERCISE of the powers contained in section sixty-two of the Roads and Road Traffic Act, the following Order is hereby made:

1. This Order may be cited as the Roads and Road Traffic (National Roads Board) (Powers and Functions) (Amendment) Order, 1997, and shall be read as one with the Roads and Road Traffic (National Roads Board) (Powers and Functions) Order, 1994, in this order referred to as the principal Order.

2. Paragraph 3 of the principal Order is amended by the addition after sub-paragraph (2) of the new sub-paragraph:

   (3) There shall be paid from the Road Fund the salaries, allowances and loans of the staff of the Board:

   Provided that such costs shall not exceed five percent of the annual revenue derived from the charges specified in items (a) and (e) of sub-paragraph (2).

3. Paragraph 4 of the principal Act is amended—

   (a) by the deletion at the end of item (m) of “and”;

   (b) by the deletion of the full-stop at the end of item (n) and the substitution therefor of a semi-colon; and

   (c) by addition after item (n) of the following new item:

      (o) appoint an executive secretary and such other members of the staff as it may consider necessary on such terms and conditions as the Board may, with the approval of the Minister, determine.
3. **Standard Format for Setting Up a Road Fund Under Existing Legislation**

[This is a standard template which may be used to prepare the legal regulations setting up a new road fund under existing legislation. The template can be cut and pasted into “new.doc” to preserve the pre-set formats and the text can then be amended to suit.]

**LEGAL NOTICE NO. ?? of 199?**

**FINANCE (ROADS FUND) REGULATIONS 199?**

In exercise of the powers conferred on me by section ... of the Finance Order 19...., *[or other relevant Orders of Decrees]*

..........................

Minister of Finance and Economic Planning *[adjust as needed]* make the following Regulations:

**Citation and commencement**

1. These regulations may be cited as the Finance (Roads Fund) Regulations 199? and shall come into operation on the date of publication in the Gazette.

**Interpretation**

2. In these regulations, unless the context otherwise requires,

   “Appointed member” means a member of the Board who is appointed by the Minister under regulation 9;

   “Board” means the board constituted under regulation 8;

   “Secretary” means the Executive Secretary of the Fund appointed under regulation 12;

   “Fund” means the Roads Fund established by the *[relevant Order or Decree]*, 199?;

   “Minister” means the minister responsible for Finance.

**Purpose of the Fund**

3. The purpose of the Fund is to finance

   (a) routine and periodic maintenance of all classified roads under the jurisdiction of the Ministry of Works and of the Ministry of Local Government;

   (b) on a cost share basis, Urban Council roads and the unclassified roads under the jurisdiction of Development Councils;

   (c) road safety projects; and

   (c) a limited amount of road upgrading, rehabilitation and new works.

**Road Fund Revenues**

4. The Road Fund shall have one or more commercial bank accounts into which the following fees and charges (the road tariff) shall be deposited:
(a) Vehicle license fees, including any supplementary heavy vehicle fees which may be introduced by the Road Fund Board;

(c) A road maintenance levy on petrol and diesel;

(d) Fines imposed on overloaded vehicles; and

(e) Any other road user charges and/or donor funding that may from time to time be allocated by Parliament.

These revenues constitute the road tariff and no one will be exempted from paying them.

Collection and Deposit Procedures

5. The Board will undertake all necessary actions to ensure that:

(a) License fees and any heavy vehicle license fees which may be introduced by the Board are separately deposited into the Consolidated Fund by the Department of Customs and the [vehicle licensing authority], and thereafter directly deposited into the Road Fund bank account.

(b) The road maintenance levy on petrol and diesel is separately deposited into the Consolidated Fund by the oil companies and thereafter directly deposited into the Road Fund bank account.

The Board will take steps to ensure that all funds due to the Road Fund are collected and deposited in a timely manner into the Road Fund bank account.

Authorized Expenditures

6. The Road Fund shall be used primarily to finance routine and periodic maintenance, which shall remain as the first charge on the Road Fund. The Road Fund will also meet the costs of administering the Road Fund. Once all road maintenance requirements have been met, the remaining funds shall be used exclusively to finance selected road safety projects, road rehabilitation, minor improvements and new works (minor improvement and new works not to exceed ...... percent of annual revenues).

7. Roads under the jurisdiction of the Ministry of ........[i.e., the trunk road network] will be fully funded by the Road Fund, while roads under the jurisdiction of the municipalities [or other local government agencies] will be financed on a cost-sharing basis. The detailed basis of the cost-sharing arrangements will be decided by the Board, published and revised from time to time. Municipalities will be expected to contribute their share of the costs using revenues from rates and other local taxes. Individuals and communities living in areas with unclassified roads will also be entitled to receive funds for maintenance. Such groups will first have to register their interests in these roads, to form themselves into local roads committees, and agree on cost-sharing arrangements for maintaining these roads. Local roads committees may contribute their share of the costs in the form of materials, direct labor and/or cash.

Management of the Road Fund

8. The Road Fund will be managed by a National Roads Board which will report to the Ministry of ........ as its parent ministry. The Board will manage the Road Fund in an executive
capacity and advise the Minister on all matters pertaining to the financing of roads. Among other things, the Board will:

(a) Improve arrangements for collecting all the fees and charges assigned to the Road Fund to minimize avoidance and evasion;

(b) Institute an integrated and coordinated approach to the planning of road works by establishing the form and content of the Annual Road Program;

(c) Establish and publish the criteria used to divide Road Fund revenues between the different road agencies entitled to draw on the Road Fund;

(d) Review and approve the Annual Road Expenditure Program prepared by the various implementing agencies;

(e) Recommend to the Minister of Finance the level of fees and charges required to finance the recommended road maintenance program for inclusion in the government’s Annual or Supplementary budget;

(f) Mobilize a publicity program to inform the public about the maintenance programs being financed from the Road Fund, assure the public that the Road Fund is well managed, and seek their support for possible increases in the level of the road user charges as and when such increases are needed.

(g) Establish procedures for disbursing funds for works forming part of the approved Annual Expenditure Program;

Composition of the National Roads Board

9. The Board will be appointed by the Minister of .......... and will consist of 12 members: the Chairman, 4 ex- officio members representing government departments, 5 members representing non-governmental organizations, and 2 members representing municipalities [or other local government agencies]. The members of the Board will be as follows:

(a) (1) The Chairman of the Board;

(b) 4 ex-officio members, being nominees of the following Ministries:

(2) Ministry of Finance ..........;
(3) Ministry of Transport;
(4) Ministry of Local Government;
(5) Ministry of Energy;

(c) 5 non-governmental members, being nominees of the following organizations:

(6) Chamber of Commerce and Industry;
(7) Bus and Taxi Operators Association;
(8) Road Transport Operators Association;
(9) Association of Consulting Engineers (or Institution of Engineers);
(10) National Farmers Association; and
10. The Chairman of the Board will be appointed by the Minister of ............, following consultations with the Board. The ex-officio members will not be below the level of Director, or equivalent. Members of the Board will be appointed for a term of two years. A member of the Board shall cease to be a member if their nomination is canceled by the organization responsible for nominating them.

11. If a member of the Board acquires any pecuniary interest, direct or indirect, in any contract or proposed contract being considered by the Board, or in any other matter in which his private interests conflict with his duties as a member of the Board, he shall, as soon as he becomes aware of his interest in the contract or proposed contract or any other matter, disclose the facts to the Board and withdraw from all meetings at which such matters may be discussed.

12. The Board may establish sub-committees dealing with subjects like: Road Safety, Environment, Engineering, and Road Fees. The Board may also invite additional non-voting members to attend any of its meetings.

Meetings of the Board

13. The Board shall meet at least once a month for a regular board meeting at a time and place decided by the Chairman. The Chairman shall, at the written request of not less than four members of the Board, convene a special meeting of the Board to transact any extraordinary business on a date specified in the request. A written notice of such meeting shall be sent to the members at least three days prior to the date of the meeting.

14. At all meetings of the Board the quorum necessary for the transaction of the business shall be a majority of the members then in office. The Board decisions will be taken by majority vote, and when the votes are equal, the Chairman shall have a casting vote, with the dissenting members having the right to have their views recorded in the minutes.

15. The minutes of every meeting of the Board shall be recorded in a register by the Secretary of the Board and signed by the Chairman of the meeting and the Secretary.

16. Members of the Board will be compensated for the time spent attending board meetings.

Road Fund Secretariat

17. The Board will be assisted by a Secretariat headed by an Executive Secretary. The Secretariat will be responsible for the day-to-day management of the Road Fund and for implementation of the decisions of the Board. The Executive Secretary will be appointed by the Board and shall perform such functions as the Board may direct or delegate to him. The Executive Secretary will also act as Secretary to the Board.

18. The Secretariat will consist of no more than [...] staff. A firm of chartered accountants, or a bank, may be appointed to act as Secretariat.

19. Among other things, the Secretariat will be expected to:
(a) Keep proper accounts and records in respect of the Road Fund;

(b) Maintain the Road Fund bank account in which shall be recorded all receipts into the Fund and all disbursements from the Fund;

(c) Prepare monthly statements of revenues collected, amounts deposited into the Road Fund bank accounts, commitments entered into by the Board, withdrawals authorized, and actual withdrawals;

(d) Prepare and submit for audit in respect of each financial year a statement of income and expenditure, a statement of cash flow, and such other financial statements as the Accountant-General may prescribe;

(e) Prepare the Annual Report in such form and with such content as prescribed by the Board;

(f) Prepare the Agenda and arrange the meetings of the Board.

**Annual Road Program**

20. At least three months before the beginning of each fiscal year, the Board shall review the Annual Road Program for that year. The Annual Road Program, in such form and containing such details as may be prescribed by the Board, shall be prepared by the road agencies responsible for maintaining the road networks funded by the Road Fund.

21. The Annual Road Program shall comprise:

   (a) The Annual Expenditure Program for the next year;

   (b) The revenue projections of the Road Fund for the next year.

22. The Annual Expenditure Program shall allocate the revenues of the Road Fund to various categories of roads for the year, following the allocation criteria prescribed by the Board. Allocation criteria may be based on the condition of the road network, the type of maintenance required (routine or periodic), the length of the road network, the volumes of traffic, the population served by the roads, and any other factors decided by the Board.

23. In consultation with the Minister of Finance, the Board will review the Annual Expenditure Program to be financed by the Road Fund and decide on (i) the affordability of the overall program; and (ii) the appropriateness of the amounts allocated for each class of road.

24. The Board shall transmit to the Minister of ............... and to the Minister of Finance the approved Annual Expenditure Program.

25. Pursuant to regulation 8, (e), the Board may recommend to the Minister of Finance any increase in the level of fees and charges required to finance the approved Annual Expenditure Program, and will provide an estimate of the additional income to the Road Fund from such increases.

**Disbursement of Funds**
26. Funds will only be disbursed for goods and services forming part of the approved Annual Expenditure Program and according to procedures to be established by the Board. Work undertaken by contractors with a value over $... must be certified by a registered engineer and payment will then be made directly to the contractor. Work undertaken by small-scale contractors, or by force of account will be subject to similar controls to be agreed between the Board and the Minister of

**Withdrawal Procedures**

27. Funds will be withdrawn from the Road Fund on presentation of a cheque signed by two authorized signatories: either one member of the Board and the Executive Secretary, or one member of the Board and a designated Accountant from the Ministry of Finance. *[other options are also possible]*

**Audits**

28. The accounts and other financial statements of the Road Fund will be audited annually by an independent firm of auditors selected by the Auditor General. The auditor will be expected to use international audit standards. The auditor will present a report to the Board which will give an opinion on the accuracy of the records and financial accounts of the Road Fund, the completeness of income of the Road Fund, the conformity of payments with the priorities laid down in Article 4, whether disbursements are in accordance with regulation 26, and the accuracy of accounting procedures and internal control procedures.

29. Technical audits of works will also be carried out on a selective basis as recommended by the Board in consultation with the Minister of ...........

**Annual Report**

30. Within four months after the end of each financial year, the Board will publish an Annual Report. The Annual Report will summarize the policies of the Board, the main activities of the Road Fund during the preceding year, the audited accounts for the year just ended and the auditors report on the accounts.

*The regulations may also want to deal with: (i) the Board's power to lend and borrow funds, and (ii) the preparation of an annual contract plan between the Board and the parent ministry covering the business objectives to be followed by the Board during the ensuing year].*
PART II: ROAD FUNDS SET UP UNDER NEW LEGISLATION

1. Road Fund Act 1996 - Ghana

[This is not a bad example, although it sets the road tariff under the government’s tax-making powers. The road fund levy is also not clearly separated from the other taxes and duties collected on transport fuels. When passing basic legislation, it is normally better to consider delegating tariff-setting powers to the board – as with any other public enterprise.]

AN ACT to establish a Fund to be known as the Road Fund to finance routine periodic maintenance and rehabilitation of public roads; to provide for the management of the Fund and to provide for related matters.

BE IT ENACTED by Parliament as follows -

PART I - ESTABLISHMENT OF THE ROAD FUND

Establishment of Road Fund

1. There is established by this Act a Road Fund referred to in this Act as "the Fund"

Object of the Road Fund.

2. (1) The object of the Fund is to finance routine, periodic maintenance and rehabilitation of public roads in the country.

(2) The Fund shall also be used to assist the Metropolitan, Municipal and District Assemblies in the exercise of their functions relevant to public roads under any enactment.

Financial resources of the Fund

3. The monies for the Fund shall be derived from -

(a) such proportion of government levy on petrol, diesel, kerosene and refined fuel oil as may be determined by the Cabinet with the approval of Parliament;

(b) bridge, ferry and road tolls collected by the Authority;

(c) vehicle license and inspection fees;

(d) international transit fees, collected from foreign vehicles entering the country; and

(e) such monies as the Minister responsible for Finance in consultation with the Minister may determine with the approval of the Parliament.

Bank account for the Fund

4. Monies for the Fund shall be paid into bank accounts opened for the purpose by the Fund Management Board established under section 5 of this Act.
PART II - MANAGEMENT OF THE FUND

Establishment of the Fund Management Board

5. (1) There is hereby established a management board for the Fund which shall be known as the Road Fund Management Board referred to in this Act as "the Board".

(2) The Board shall be composed of the following persons -

(a) the Minister for Roads and Transport or his representative who shall be the Chairman;

(b) the Minister for Finance or his representative;

(c) the Minister for Mines and Energy or his representative;

(d) the Accountant-General or his representative;

(e) the Minister for Local Government and Rural Development or his representative;

(f) two persons nominated from outside the Ministry of Roads and Transport by the Minister; and

(g) one representative from each of the following organizations nominated by the organization concerned -

(i) the Association of Road Contractors;

(ii) the Ghana Private Road Transport Union;

(iii) the Ghana Enterprise Foundation;

(iv) the Ghana Road Haulage Association;

(v) the Ghana Institute of Engineers; and

(vi) the Ghana National Association of Farmers and Fishermen (Crops).

Management of the Fund

6. (1) The Fund shall be managed and administered by the Board.

(2) For the purposes of subsection (1) of this section the Board shall -

(a) arrange for the collection of monies assigned to the Fund;

(b) identify other sources of funding;

(c) co-ordinate and ensure total and timely accountability of the Fund;

(d) recommend to the Cabinet after consultation with the Minister of Finance the level of the road levy and other road user charges that shall be paid into the Fund;
(e) improve arrangements for the collection of road user charges by the Minister or agents assigned for the purpose;

(f) prepare and publish procedures for the disbursement of the Fund;

(g) determine the certification necessary to ensure that work is completed according to specification; and

(h) review the annual expenditure programmes of the road implementing department and bodies;

(i) determine how much of the financing of the expenditure programmes of the road agencies should come from the Fund, taking into consideration any cost-sharing formula there may be; and

(j) perform such other functions as may be incidental to its functions under this Act.

Tenure of office of members

7. (1) A member of the Board other than an ex officio member shall hold office for a period not exceeding three years and is on the expiration of that period eligible for re-appointment.

(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

8. The Chairman and 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

9. (1) The Board shall meet for the dispatch 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 of whom at least two shall be from the public sector and two from the private sector.
(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 no 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

10. (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.

Charges on the Fund

11. Subject to section 2 of this Act the charges on the Fund shall be for -

(a) routine and periodic maintenance of road and related facilities;

(b) upgrading and rehabilitation of roads;

(c) road safety activities;

(d) selected road safety projects; and

(f) such other relevant matters as may be determined by the Board.

Annual Road Programme and Annual Expenditure Programme

12. (1) There shall be prepared annually at least three months before the end of the preceding financial year for the consideration and approval of the Board, an Annual Road Programme and Annual Expenditure Programme in respect of the next financial year by the departments and bodies charged with the implementation of the road polices of the Ministry.

(2) The Annual Road Programme shall be in such form and contain such particulars as the Board shall determine but shall include -
(a) the relevant Annual Expenditure Programme of the departments and bodies for the next financial year; and

(b) grounds for the expenditure in respect of each road; and

(c) the revenue projections for the financial year of the department and bodies for the Fund.

(3) Allocation from the Fund to the implementing departments and bodies shall be based among others on the conditions of the road network, maintenance requirements, the length of the road network and the relevant volume of the traffic.

(4) The Board shall prepare the total Annual Expenditure Programme to be financed from the Fund in consultation with the Ministry of Finance and shall consider --

(a) the affordability of the overall programme; and

(b) the appropriateness of the amount allocated for each class of road.

(5) The Board shall submit a report of the prepared total Annual Expenditure Programme to the Minister for Roads and Transport.

Disbursement of the Fund

13. Money from the Fund shall only be disbursed for goods and services that form part of the approved Annual Expenditure Programme.

Withdrawal procedure

14. Money may be withdrawn from the Fund upon presentation to the bank of a cheque signed by -

(a) the Chairman of the Board and the representative of the Account-General on the Board; or

(b) the Chairman of the Board and one other member representing a private sector organisation on the Board.

PART III - FINANCIAL PROVISIONS AND ADMINISTRATION

Accounts and audit

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

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

(3) Without prejudice to subsection (2) of this section, an audit report to the Fund shall specify whether in the opinion of the Auditor-General -

(a) a proper books of accounts have been kept in respect of the Fund;
(b) the financial statement on the Fund is accurate;

(c) payments made for the Fund were in conformity with the authorized expenditure properly approved;

(d) the disbursements made were in accordance with disbursement procedures; and

(e) the accounting procedures and internal control procedures were accurate.

(4) In addition to the annual audit, technical audits shall be conducted on a selective basis by the Auditor-General or by an auditor appointed by the Auditor-General on the recommendation of the Board.

Secretarial services for the Fund

16. (1) The Chief Director of the Ministry shall act as secretary to the Fund and shall be responsible for the day-to-day management of the Fund.

(2) There shall also be provided by the Ministry for the management of the Fund such other staff as shall be necessary.

Financial year

17. The financial year of the Fund shall be the same as the financial year of the Government.

Annual report

18. (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 Fund during the year to which the report relates and shall include-

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

   (b) 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.

Interpretation

19. In this Act unless the context otherwise requires -

"Annual Road Programme” means the programme relating to routine and periodic road maintenance;

"Annual Expenditure” means the expenditure relating to routine and periodic road maintenance;

"Authority” means the Ghana Highway Authority;

"department” means any public department charged with the implementation of road policies;
"Minister" means the Minister for Roads and Highways.
2. Legislation Setting Up a Road Fund Administration - New Zealand

[This legislation amends the Transit New Zealand Act to create a separate road fund administration. Prior to the amendment, the road fund had been managed by Transit New Zealand. Since the road fund financed road works under the jurisdiction of Transit New Zealand, the municipalities and the regional transport authorities, this arrangement created a conflict of interest. In 1995 the government therefore decided to separate management of the road fund from management of Transit New Zealand by creating a separate entity called Transfund New Zealand. One of the surprising things about the new Act is that road fund revenues continue to be collected under the government’s tax-making powers. It is expected that this will be changed during the next 3-5 years.]

Transit New Zealand Amendment
1995
ANALYSIS

[Items 1 to 12 deal with changes to TNZ]

Provisions Coming into Force on 1 July 1996

13. Interpretation
14. New Part IA inserted

PART IA
TRANSFUND NEW ZEALAND

3A. Constitution of Transfund New Zealand
3B. Principal objective of Board
3C. Functions and powers of Board
3D. Functions and powers of Board in relation to alternative forms of transport
3E. Board to have powers of natural person
3F. Board to comply with policy directions
3G. Use of words 'Transfund New Zealand'
3H. Board to consider delegating or contracting out functions and powers
3I. Delegation of Board's functions or powers to employees of Board
3J. Delegation of Board's functions or powers to persons outside Board

[Items 15 to 17 deal with changes to TNZ]

18. New Parts II and III substituted

PART II
FUNDING OF CAPITAL PROJECTS AND OUTPUTS

Land Transport Funding

8. Interpretation
9. Payment of roading revenue to Crown Bank Account
10. Crown's authority to incur certain land transport expenditure
11. Payment of roading revenue into Crown Bank Account
12. Payment of roading revenue from Crown Bank Account

National Roads Account

13. Board to operate National Roads Account
14. Management and investment of National Roads Account
15. Payments from National Roads Account
16. Payments by Board
17. Board may approve outputs and capital projects
18. Approved projects to form part of national roading programme

Payments from National Roads Account to Authority

19. Payments to Authority
20. Authority to operate State Highways Account
21. Management and investment of State Highways Account
22. Payments from State Highways Account

Payments from National Roads Account to Local Authorities

23. Payments to local authorities
24. Local authorities to operate Land Transport Disbursement Accounts

Restrictions on Payments from State Highways Account and Land Transport Disbursement Accounts

25. Interpretation
26. Competitive pricing procedure
27. Expenditure subject to competitive pricing procedure
28. Special provisions relating to in-house professional services
29. Special provisions relating to minor and ancillary works during 1997 and 1998
30. Certain payments for minor and ancillary works deemed to comply with section 27
31. Information to be provided by local authority in respect of certain payments
32. Determinations by Minister
33. Board may reduce payments in certain cases
34. Board may require certain information from Authority and local authorities
35. Payments may be conditional on projects being carried out to satisfactory standard
36. Certain payments prohibited

[The remainder of the Act deals with road safety and miscellaneous provisions relating to TNZ]
1. Short Title and commencement—

(1) This Act may be cited as the Transit New Zealand Amendment Act 1995, and shall be read together with and deemed part of the Transit New Zealand Act 1989 (hereinafter referred to as the principal Act).

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the day on which it receives the Royal assent.

(3) Sections 13 to 40 (except section 37 (1)) of this Act, and the Schedules to this Act, shall come into force on the 1st day of July 1996.

Provisions Coming into Force on 1 July 1996

13. Interpretation—

[This initial section deals with definitions.]

14. New Part IA inserted—

The principal Act is hereby amended by inserting, before Part I, the following Part:

PART IA
TRANSFUND NEW ZEALAND

3A. Constitution of Transfund New Zealand—

(1) There is hereby established a Board to be known as Transfund New Zealand.

(2) The Board shall consist of—

(a) Two members, each of whom shall be an employee or member of the [Transit New Zealand] Authority; and

(b) One member who shall represent local government; and (c) One member who shall represent road users; and

(c) One member who shall represent an aspect of the public interest that is not represented by the other members of the Board.

(3) The members of the Board shall be appointed by the Governor-General on the recommendation of the Minister having regard to their expertise in such matters as will ensure that the Board achieves its principal objective.

(4) The Minister shall not make any recommendation under subsection (3) of this section unless he or she has consulted with such persons, representative groups within the land transport industry or elsewhere, Government departments, and Crown entities as he or she considers appropriate.

(5) A person may hold office as a member concurrently with any other office, except any office or appointment under the Transport Accident Investigation Commission Act 1990.
(6) The Board shall be a body corporate with perpetual succession and a common seal.

(7) The seal of the Board shall be judicially noticed in all courts and for all purposes.

(8) The Board is hereby deemed to be a Crown entity for the purposes of the Public Finance Act 1989.

(9) The provisions of Schedule 1A to this Act shall apply in relation to the Board and its proceedings, members, consultants, agents, specialists, committees, and any employee.

3B. Principal objective of Board—

The principal objective of the Board shall be to allocate resources to achieve a safe and efficient roading system.

3C. Functions and powers of Board—

(1) The functions of the Board shall be—

(a) To approve and to purchase a national roading programme in accordance with section 42A of this Act [attached as Annex 1]:

(b) To approve capital projects and to purchase outputs under section 17 of this Act:

(c) To make payments from the National Roads Account as authorized by this Act:

(d) To review and revise the national roading programme in accordance with its most recent performance agreement:

(e) To approve competitive pricing procedures under section 26 of this Act:

(f) To audit the performance of the Authority as compared with its State highways programme:

(g) To assist and advise local authorities in relation to their functions, duties, and powers under this Act and the Land Transport Act 1993:

(h) To audit the performance of every local authority as compared with its regional programme or district roading programme, as the case may be:

(i) To provide the Minister with such information and advice as the Minister may from time to time require:

(j) To carry out such other functions and duties, in relation to roading, as the Minister may from time to time prescribe by notice in the Gazette.
(2) For the avoidance of doubt, it is hereby declared that in performing or exercising any functions or powers in relation

(a) The inclusion of outputs and capital projects in the national roading programme; and

(b) The making of payments from the National Roads Account—the Board shall act independently of the Minister and the Authority.

3D. **Functions and powers of Board in relation to alternative forms of transport**—

Without limiting any other provision of this Act, it is hereby declared that—

(a) The power of the Board to fund any outputs under this Act authorizes the Board to fund outputs that consider or develop efficient alternatives to the provision or maintenance of roading; and

(b) Any such output may relate to one or more of the following, namely, passenger services, rail transport, and maritime transport; and, for the purposes of this paragraph, the terms 'passenger services', 'rail transport, and 'maritime transport' include the carriage of freight and the carriage of passengers.

3E. **Board to have powers of natural person**—

(1) Except as provided in this Act, the Board shall have—

(a) The rights, powers, and privileges of a natural person; and

(b) The power [o do any thing it is authorized to do by or under—

(i) This Act; or
(ii) Any other enactment; or
(iii) Any rule of law.

(2) The Board shall not exercise any of its rights, powers, or privileges except for the purpose of performing its functions.

Cf. 1993, No. 88, s. 19

3F. **Board to comply with policy directions**—

In the exercise of its functions, duties, and powers under this Act, the Board shall have regard to the policy of the Government in relation to land transport, and shall comply with any general directions relating to that policy given in writing signed by the Minister. Within 12 sitting days after any such direction is given, the Minister shall publish in the Gazette and lay before the House of Representatives a copy of that direction.

Cf. 1989, No. 75, s. 7

3G. **Use of words “Transfund New Zealand”**—
(1) No company or other body shall be incorporated or registered under a name that contains the words 'Transfund New Zealand' or under any name that, in the opinion of the Registrar of Companies, or the appropriate registering authority within the meaning of section 2 of the Flags, Emblems, and Names Protection Act 1981, so resembles such a name as to be likely to deceive.

(2) Nothing in subsection (1) of this section shall apply to the Board or to any person who is appropriately authorized by the Board.

3H. Board to consider delegating or contracting out functions and powers—

Subject to this Act, the Board shall, in the course of performing its functions and powers, consider whether it could most efficiently and effectively perform those functions and powers by means of its own operations or by delegating or contracting out those operations to appropriate persons selected after an appropriate competitive process.

Cf. 1993, No. 88, S. 20

3I. Delegation of Board's functions or powers to employees of Board—

(1) The Board may from time to time, either generally or particularly, delegate to an employee of the Board any of its functions and powers under this Act or any other Act, or under any regulations or rules made under this Act or any other Act.

(2) Every delegation under this section shall be in writing.

(3) The Board shall not delegate any functions or powers delegated to the Board by the Minister without the written consent of the Minister.

(4) In any case where the Board has delegated any functions or powers to an employee of the Board under this section, that employee may, with the prior approval in writing of the Board, delegate to any other employee of the Board such of those functions or powers as are so approved.

(5) Subject to any general or special directions given or conditions imposed by the Board, any employee of the Board to whom any functions or powers are delegated under this section may perform those functions and exercise those powers in the same manner and with the same effect as if they had been conferred or imposed on that employee directly by this Act and not by delegation.

(6) Every employee of the Board purporting to act under any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(7) Any delegation under this section may be made to a specified employee of the Board or to employees of a specified class, or to the holder or holders for the time being of a specified office of the Board or a specified class of office of the Board.

(8) No delegation under this section shall affect or prevent the performance of any function or the exercise of any power by the Board, nor shall any such delegation affect the responsibility of the Board for the actions of an employee of the Board acting under the delegation.
(9) Every delegation under this section shall, until it is revoked, continue in force according to its tenor, notwithstanding the fact that the employee of the Board by whom it was made may cease to hold office, and shall continue to have effect as if made by the employee for the time being holding that office.

(10) Every employee of the Board purporting to act under any delegation under this section shall, when reasonably requested to do so, produce evidence of his or her authority to so act.

Cf. 1993, No. 88, s. 27

3J. Delegation of Board's functions or powers to persons outside Board—

(1) Subject to this section, the Board may from time to time, either generally or particularly, delegate to any person who is not an employee of the Board all or any of the Board's functions and powers under this Act or any other Act, or under any regulations or rules made under this Act or any other Act.

(2) Every delegation under this section shall be in writing.

(3) No delegation shall be made under this section without the written consent of the Minister.

(4) In any case where the Board has delegated any functions or powers to any person under this section, that person may, with the prior approval in writing of the Minister, delegate to any other person such of those functions or powers as are so approved.

(5) Subject to any general or special directions given or conditions imposed by the Board, any person may exercise any functions or powers delegated under this section in the same manner and with the same effect as if they had been conferred or imposed on that person directly by this section and not by delegation.

(6) Any delegation under this section may be made to a specified person or persons of a specified class or to the holder or holders for the time being of a specified office or specified class of office.

(7) Every delegation under this section shall be given for a specified period but in any event shall be revocable at will.

(8) No delegation under this section shall affect or prevent the performance or exercise of any function or power by the Board, nor shall any such delegation affect the responsibility of the Board, for the actions of any person acting under the delegation.

(9) Every delegation under this section shall, until it is revoked or it expires, continue in force according to its tenor, notwithstanding the fact that the person by whom it was made may cease to hold office, and shall continue to have effect as if it were made by the person for the time being holding that office.

(10) Every person purporting to act under any delegation under this section shall, when reasonably requested to do so, produce evidence of his or her authority to so act.
Any person who exercises any function or power under a delegation made under this section may charge the person in respect of whom the function or power is exercised a reasonable fee in respect of the exercise of that function or power.

[Sections 15 to 17 deal with changes in the responsibilities of Transit New Zealand.]

18. New Parts II and III substituted —

(1) The principal Act is hereby amended by repealing Parts II and III, and substituting the following Parts:

PART II
FUNDING OF CAPITAL PROJECTS AND OUTPUTS

Land Transport Funding

8. Interpretation—

In this Part of this Act, unless the context otherwise requires, 'roading revenue' means—

(a) All excise duty payable under section 100 of this Act; and
(b) All fees and charges payable under the Road User Charges Act 1977; and
(c) All fees and charges payable under Part I of the Transport (Vehicle and Driver Registration and Licensing) Act 1986; and
(d) All money receivable by the Crown from the sale of land acquired under the Public Works Act 1981 (or any enactment repealed by that Act) for the purposes of a State highway or any proposed State highway; and
(e) An amount equal to the goods and services tax payable on expenses, costs, and refunds payable under section 10 of this Act; and
(f) The proportion of the interest earned, or interest saved, from the investment of public money that relates to roading revenue; and
(g) Such amounts of public money as Parliament appropriates for the purpose from time to time; and
(h) All other public money that is required by any enactment to be treated as roading revenue for the purposes of this Act.

9. Payment of roading revenue to Crown Bank Account—

All roading revenue shall be lodged into the Crown Bank Account.

10. Crown's authority to incur certain land transport expenditure—

(1) In each year, the Crown shall incur a liability to purchase outputs and to fund capital projects.

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(2) The liability of the Crown under subsection (1) of this section shall be equal to the amount of roading revenue earned in that year and there shall be payable by the Crown—

(a) To the relevant collecting body, the negotiated amount for the outputs delivered in that year in—

(i) Collecting roading revenue; and
(ii) Administering and enforcing the Road User Charges Act 1977; and

(b) To the relevant collecting body, refunds paid or payable in that year of—

(i) Road user charges and additional charges in accordance with section 22 (2) of the Road User Charges Act 1977; and
(ii) Fuel excise duty in accordance with section 101 of this Act; and
(iii) Fees and charges in accordance with Part I of the Transport (Vehicle and Driver Registration and Licensing) Act 1986; and

(c) To the Land Transport Safety Authority, the negotiated amount for the outputs delivered in relation to the safety (administration) outputs contained in an approved safety (administration) programme for that year less any revenue received or receivable by that Authority from other sources applicable to outputs in the programme; and

(d) To the Commissioner, the negotiated amount for the outputs delivered in relation to the safety (administration) outputs contained in an approved safety (administration) programme for that year less any revenue received or receivable by the Commissioner from other sources applicable to outputs in the programme; and

(e) To Transfund New Zealand, an amount equal to the roading revenue for that year less the amount of the liabilities incurred for that year under paragraphs (a) to (d) of this subsection.

(3) The liability of the Crown under subsection (1) of this section shall in each year be payable by the Crown without further appropriation than this section.

11. **Payment of roading revenue into Crown Bank Account**—All roading revenue shall be paid into the Crown Bank Account as soon as practicable after its receipt by the relevant collecting body.

12. **Payment of roading revenue from Crown Bank Account**—There shall be paid from the Crown Bank Account in each year—

(a) To the relevant collecting body, in such installments and on such terms and conditions as are from time to time agreed between the Secretary and that collecting body, the negotiated amount for the outputs delivered and the capital expenditure incurred in collecting the roading revenue or in administering and in enforcing the Road User Charges Act 1977; and
(b) To the relevant collecting body, as soon as reasonably practicable after request by that body, any refunds of—

(i) Road user charges and additional charges under section 22 (2) of the Road User Charges Act 1977; and

(ii) Excise duty under section 101 of this Act; and

(iii) Fees and charges in accordance with Part I of the Transport (Vehicle and Driver Registration and Licensing) Act 1986; and

(c) To the Land Transport Safety Authority, in such installments and on such terms and conditions as are from time to time agreed between the Minister of Finance and the Minister of Transport, the negotiated amount for the outputs delivered under the approved safety (administration) programmes for that year (net of revenue received by the Land Transport Safety Authority from other sources applicable to projects in that programme); and

(d) To the Commissioner, in such installments and on such terms and conditions as are from time to time agreed between the Minister of Finance and the Minister of Police, the negotiated amount for the outputs delivered under the approved safety (administration) programme for that year (net of revenue received by the Commissioner from other sources applicable to outputs in that programme); and

(e) To the National Roads Account of the Board, in such installments and on such terms and conditions as are from time to time agreed between the Minister of Finance and the Minister of Transport, the amount for the outputs delivered and the capital expenditure incurred in the national roading programme for that year.

National Roads Account

13. Board to operate National Roads Account—

(1) The Board shall establish, maintain, and operate an account or accounts with such bank or banks as the Board resolves, and such account or accounts shall collectively be known as the National Roads Account.

(2) Each year, in addition to the amount paid into the Account under section 11 of this Act, there shall be paid into the Account the following amounts:

(a) All income derived from the investment from time to time of money in the Account, including any gains made on the sale of any investment of money of the Account, and interest or gains on that investment:

(b) All financial assistance refunded to the Account by a local authority under section 23 (3) of this Act:

(c) All receipts relating to the trading revenue of the Board:

(d) All other money that should lawfully be paid into the Account.
14. **Management and investment of National Roads Account**—

(1) The Board shall manage the National Roads Account in accordance with the provisions of this Act and shall exercise the care, diligence, and skill that a prudent person of business would exercise in managing the affairs of others.

(2) The Board may invest any money held in the Account in accordance with section 25 of the Public Finance Act 1989.

15. **Payments from National Roads Account**—

Payments from the National Roads Account shall be made only by or on behalf of the Board and such payments shall be made only in accordance with the provisions of this Act.

16. **Payments by Board**—

Each year there shall be payable out of the National Roads Account—

(a) All costs and expenses of the Board arising out of the performance of its functions and duties and the exercise of its powers under this Act or any other Act:

(b) All compensation or damages payable by the Board. Cf. 1989, No. 75, s. 17

17. **Board may approve outputs and capital projects**—

(1) The Board may approve any output or capital project as qualifying for payments from the National Roads Account if—

(a) The output or capital project has been evaluated to the satisfaction of the Board in accordance with the relevant provisions of the most recent approved performance agreement; and

(b) The Board considers that the budgeted expenditure on approved outputs and capital projects included in the national roading programme for the year concerned will not exceed—

(i) The sum of—

   A) The roading revenue for that year; and

   B) Such other money as may be owing to the Board (including any liability of the Crown to the Board under section 10 of this Act); less

(ii) The minimum balance of the Account for that year as provided in the performance agreement.
(2) In considering whether or not to approve any output or capital project, the Board shall ensure that the granting of such approval will not be inconsistent with any national land transport strategy or any relevant regional land transport strategies.

(3) Where the Board decides not to approve under this section an output or capital project contained in a State highways programme, a regional programme, or a district roading programme, the Board shall—

(a) So advise in writing the Authority or the regional council or territorial authority submitting that programme; and

(b) Give reasons for its decision.

(4) Notwithstanding subsection (1) of this section, the Board may approve any output or capital project where in the opinion of the Board the output or capital project is—

(a) In the urgent interests of public safety; or

(b) Necessary to effect immediate or temporary repair of damage caused by a sudden and unexpected event. Cf. 1989, No. 75, s. 14; 1992, No. 70, s 4

18. Approved projects to form part of national roading programme—

(1) Every approved output or capital project, until completed, suspended, or abandoned, shall be incorporated in and form part of the national roading programme.

(2) No approved output or capital project shall be suspended or abandoned without the prior written approval of the Board.

Payments from National Roads Account to Authority

19. Payments to Authority—

(1) The Board shall pay to the Authority, out of the National Roads Account, the negotiated amount or the interim payments for the approved outputs and capital projects in accordance with the actual payment profiles of the State Highways Account.

(2) The Board shall make such adjustments as it thinks appropriate to the amount to be paid to the Authority under subsection (1) of this section to take account of the amounts said into the State Highways Account under paragraphs (a), (b), and (h) of section 20 (3) of this Act.

(3) Notwithstanding anything to the contrary in this section, whenever the Board is satisfied that the amount of payments requested from the Board in respect of any approved output or capital project in any year is based upon a factor which is incorrect for any reason, the Board may, if it thinks fit, make such adjustments to the amounts to be paid under subsection (1) of this section as it thinks reasonable.
(4) If any Payment received by the Authority under subsection (i) of this section is not paid or not fully paid in the year in which it is received, the unpaid portion shall, unless the Board otherwise agrees, be refunded to the Account.

Cf. 1989, No. 75, s. 16

20. Authority to operate State Highways Account—

(1) The Authority shall establish, maintain, and operate an account or accounts with such bank or banks as the Authority resolves, and such accounts shall be collectively known as the State Highways Account.

(2) All money received by the Authority from the National Roads Account shall be paid into the State Highways Account.

(3) Each year, in addition to the amount paid into the account under section 19 of this Act, the following money shall be paid into the State Highways Account:

(a) All income derived from the investment from time to time of money in the State Highways Account, including any gains made on the sale of any investment of money of the Account, and interest or gains on that investment:

(b) All money received by the Authority for or from its management of Crown lands under section 61 (4) of this Act:

(c) All money received by the Authority from the issue of permits under the Heavy Motor Vehicle Regulations 1974:

(d) All money derived from the provision of advisory and related services:

(e) All contributions made by developers to outputs and capital projects for which the Authority is responsible:

(f) All money received by the Authority under an order made by a Court under section 51 (3) of this Act:

(g) All money recovered by the Authority under section 55 (8) or section 57 (4) of this Act:

(h) All other money that is required by law to be paid into the Account.

21. Management and investment of State Highways Account—

(1) The Authority shall manage the State Highways Account in accordance with the provisions of this Act and shall exercise the care, diligence, and skill that a prudent person of business would exercise in managing the affairs of others.

(2) The Authority may invest any money held in the Account in accordance with section 25 of the Public Finance Act 1989.
22. Payments from State Highways Account—

Each year there shall be payable out of the State Highways Account—

(a) All costs and expenses of the Authority arising out of the performance of its functions and duties and the exercise of its powers under this Act or any other Act:

(b) All compensation or damages payable by the Authority

(c) All compensation payable by the Crown under the Public Works Act 1981 in respect of the acquisition of any land for any of the purposes authorized by this Act.

Payments From National Roads Account to Local Authorities

23. Payments to local authorities—

(1) The Board shall pay to a local authority, out of the National Roads Account, the costs or the interim payments for any approved outputs or capital projects for which the local authority is responsible.

(2) Notwithstanding anything to the contrary in this section, whenever the Board is satisfied that the amount of the interim payments requested from the Board in respect of any approved output or capital project in any year is based upon a factor which is proved to the satisfaction of the Board to be incorrect for any reason, the Board may, if it thinks fit, make such adjustments to the amount to be paid under subsection (1) of this section as it thinks reasonable.

(3) If any payment received by a local authority under subsection (1) of this section is not paid or not fully paid by the local authority in the year in which it is received, the unpaid portion shall, unless the Board otherwise agrees, be refunded to the Account.

24. Local authorities to operate Land Transport Disbursement Accounts—

(1) All money received by any local authority from the National Roads Account shall be paid into a separate account of the local authority to be known as the Land Transport Disbursement Account, and shall be expended only on approved outputs and capital projects.

(2) All expenditure from a Land Transport Disbursement Account shall be recorded in that account in a form that contains such details as are prescribed by the Board from time to time after consultation with the Controller and Auditor-General.

Restrictions on Payments from State Highways Account and Land Transport Disbursement Accounts

25. Interpretation—

(1) In this section, and in sections 26 to 32 of this Act, unless the context otherwise requires,—
“*In-house professional services*”—

(a) Means services carried out by a local authority—

(i) Using its own staff and assets; and
(ii) Associated with a local road; and
(iii) Determined by the Board to be in-house professional services; but

(b) Does not include minor and ancillary works or services associated with a State highway:

“*Minor and ancillary works*”—

(a) Means works associated with a local road that are determined by the Board to be minor and ancillary roading works; but

(b) Does not include in-house professional services or works associated with a State highway:

“1996 financial year” means the period commencing on the 1st day of July 1995 and ending with the close of the 30th day of June 1996:

“1997 financial year” means the period commencing on the 1st day of July 1996 and ending with the close of the 30th day of June 1997:

“1998 financial year” means the period commencing on the 1st day of July 1997 and ending with the close of the 30th day of June 1998.

(2) If there is any dispute or difference between a local authority and the Board as to whether any services are in-house professional services or whether any works are minor and ancillary works, the question shall be determined by a single arbitrator appointed by the Minister, and the following provisions shall apply:

(a) No member or employee of the local authority or the Board shall be qualified to be an arbitrator under this subsection:

(b) The local authority and the Board shall be the parties to the arbitration:

(c) Sections 13 and 22 of the Arbitration Act 1908 (which relate to enforcement and remuneration respectively) shall apply in relation to an arbitration under this subsection as if this subsection were a submission to arbitration within the meaning of that Act, but no other provisions of that Act shall apply in relation to an arbitration under this subsection.

*Cf. 1989, No. 75, s. 20A(6); 1991, No. 57, s. 3*

26. **Competitive pricing procedure**—

(1) For the purposes of section 27 of this Act the Board shall from time to time approve a competitive pricing procedure for each output or capital project or class of output or capital project.
(2) In approving a competitive pricing procedure the Board may—

(a) Specify particular terms and conditions which shall be included in any contract formed under that procedure:

(b) Specify particular terms and conditions which shall be excluded from any contract formed under that procedure.

(3) In exercising its powers under subsection (1) or subsection (2) of this section, the Board shall have regard to—

(a) The efficient application of the State Highways Account and Land Transport Disbursement Accounts:

(b) The safety and other interests of the public in respect of the output or capital project or the class of output or capital project:

(c) The desirability of encouraging competition in the sector of industry likely to supply goods or services in relation to the output or capital project or the class of output or capital project:

(d) The undesirability of excluding from competition for the output or capital project or the class of output or capital project any party who might otherwise be willing an able to compete:

(e) The costs of administration associated with the pricing procedure or of any contract formed under that procedure.

Cf. 1989, No. 75, s. 19

27. **Expenditure subject to competitive pricing procedure**—

(1) No payment—

(a) In respect of any output or capital project carried out by the Authority under this Act, shall be made from the State Highways Account; or

(b) In respect of any output or capital project, shall be made from the Land Transport Disbursement Account of any local authority,—

    unless the payment relates to an approved output or capital project, the price of which has been determined by a competitive pricing procedure, and no such payment shall be made to any local authority.

(2) Without limiting subsection (1) of this section, no payment from any source shall be made by any local authority in respect of any passenger service unless the amount of the payment has been determined by a competitive pricing procedure, and no such payment shall be made to any local authority.

(3) Without limiting subsection (1) or subsection (2) of this section,
(a) No payment in respect of any output or capital project shall be made from the State Highways Account, or the Land Transport Disbursement Account of a local authority, to any local authority trading enterprise; and

(b) No payment in respect of a passenger service shall be made by a local authority from any source to a passenger transport company; unless

(c) The amount of the payment has been determined by a competitive pricing procedure; and

(d) The local authority trading enterprise, or the passenger transport company, is a company that has no fewer than 3 directors, of whom—

(i) Where there are fewer than 6 directors, not more than 1 is a member or employee of any local authority:

(ii) Where there are 6 or more directors, not more than 2 are members or employees of any local authority; and

(e) No equity securities or debt securities in the local authority trading enterprise, or the passenger transport company, are held directly or indirectly by any regional council (other than the Chatham Islands County Council or any regional council that is also a district council); and

(f) The Board is satisfied that—

(i) The local authority trading enterprise, or the passenger transport company, has been established, and an undertaking of a local authority has been transferred to it, in accordance with the requirements of Part XXXIV A of the Local Government Act 1974; and

(ii) The local authority trading enterprise, or the passenger transport company, is being operated in accordance with the requirements of the Local Government Act 1974; and

(iii) The local authority trading enterprise is being operated in accordance with the requirements of any determination under section 32 of this Act.

(4) Nothing in subsection (1) or subsection (2) or subsection (3) of this section applies in relation to any payment made in respect of—

(a) Any approved output of administration; or

(b) Any special purpose road (within the meaning of section 104 of this Act) that is under the control of the Department of Conservation; or

(c) Any registered service of any operator in relation to any 2-month period that follows—

(i) The withdrawal or proposed withdrawal of that operator from the provision of the service, or

(ii) The withdrawal of any other operator from the provision of the same or a similar service; or
(d) Any expenditure that is necessary in the urgent interests of public safety; or

(e) Any expenditure that is necessary for the immediate or temporary repair of damage caused by a sudden and unexpected event.

(5) Nothing in subsection (1) of this section prevents a local authority making payments from its Land Transport Disbursement Account in respect of minor and ancillary works carried out by any business unit established by it or any other local authority if that business unit has been formed and is operated in accordance with the requirements of a determination under section 32 of this Act.

(6) In the case of an output referred to in section 3D of this Act that is not an output in respect of a passenger service, the output shall be subject to the competitive pricing procedure for the time being determined by the Board as being appropriate in the circumstances.

Cf. 1989, No. 75, s. 20; 1990, No. 122, s. 2; 1991, No. 57, s. 2 (1)

28. Special provisions relating to in-house professional services—

(1) Notwithstanding any other provision of this Act,—

(a) Payments may be made from the Land Transport Disbursement Account of a territorial authority in respect of in-house professional services and such payments may be made to that territorial authority; and

(b) Nothing in section 27 of this Act shall be read as requiring the price of any in-house professional services to be determined by a competitive pricing procedure.

(2) After the 30th day of June 1997, no payment in respect of the provision of a territorial authority's in-house professional services shall be made from its Land Transport Disbursement Account unless it has complied with subsection (3) of this section.

(3) Before performing, by using its own employees and in-house resources, any in-use professional services funded in whole or in part from its Land Transport Disbursement Account, the territorial authority shall give due consideration to the advantages and disadvantages of contracting out those services to any person or organization.

(4) Without limiting subsection (3) of this section, due consideration under that subsection requires due consideration of—

(a) The benefits of separating the functions of a purchaser and a supplier; and

(b) The desirability for work to be properly specified and monitored; and

(c) The desirability of transferring risk and accountability; and

(d) The cost effectiveness of each option; and
(e) The benefits of ensuring contestability of services; and

(f) The availability of resources to undertake the work; and

(g) Any other matters determined for the purpose by the Board after consultation with the Audit Office and territorial authorities (or any person or organization representing territorial authorities) and notified by the Board to territorial authorities.

(5) If professional services are performed by individuals other than employees of the territorial authority or by persons or organizations other than the authority, such services shall be subject to the competitive pricing procedure for the time being determined for the purpose by the Board.

29. Special provisions relating to minor and ancillary works during 1997 and 1998—

(1) A local authority may, during the 1997 financial year, make payments from its Land Transport Disbursement Account that are not in accordance with section 27 (1) of this Act if—

(a) Those payments are in respect of minor and ancillary works; and

(b) The local authority ensures that during the 1997 financial year it makes payments in respect of minor and ancillary works that—

(i) Are in accordance with section 27 (1) of this Act; and

(ii) Total not less than one-third of the total amount of payments made by it in respect of minor and ancillary works from its Land Transport Disbursement Account during the 1996 financial year.

(2) A local authority may, during the 1998 financial year, make payments from its Land Transport Disbursement Account that are not in accordance with section 27 (1) of this Act if—

(a) Those payments are in respect of minor and ancillary works; and

(b) The local authority ensures that during the 1998 financial year it makes payments in respect of minor and ancillary works that—

(i) Are in accordance with section 27 (1) of this Act; and

(ii) Total not less than two-thirds of the total amount of payments made by it in respect of minor and ancillary works from its Land Transport Disbursement Account during the 1997 financial year.

30. Certain payments for minor and ancillary works deemed to comply with section 27—

Every payment in respect of minor and ancillary works that has been made by a local authority from its Land Transport Disbursement Account under a legally enforceable written contract—
(a) Shall, if the contract was signed before the 13th day of May 1994 and the payment was made during the minimum period of the contract (as expressed in the contract at the date of its execution), be deemed for the purposes of sections 27 and 29 of this Act to have been made in accordance with the provisions of section 27 of this Act; and

(b) Shall, if the contract was signed on or after the 13th day of May 1994 but before the commencement of this section, and the payment is made before the 30th day of June 1999, be deemed for the purposes of sections 27 and 29 of this Act to have been made in accordance with the provisions of section 27 of this Act.

31. **Information to be provided by local authority in respect of certain payments**—

If a local authority uses in any year its own staff or assets in providing in-house professional services, or performing minor and ancillary works, for which payments are made from its Land Transport Disbursement Account, the local authority shall report on those services and works in accordance with the requirements of any determination under section 32 of this Act in the local authority's annual report and audited financial statements under sections 223D and 223E of the Local Government Act 1974.

32. **Determinations by Minister**—

The Minister may from time to time, after consultation with the Board, by notice in writing—

(a) Determine the requirements for the operation of local authority trading enterprises to which payments may be made under section 27 (3) of this Act from the State Highways Account or from the Land Transport Disbursement Account of a local authority; and

(b) Determine the requirements for the formation and operation of business units of local authorities to which payments may be made under section 27 (5) of this Act for minor and ancillary works; and

(c) Determine the requirements for reporting under section 31 of this Act by a local authority in its annual report and audited financial statements on—

(i) Its use of staff and assets in providing in-house professional services; or

(ii) The provision of minor and ancillary works,—

for which payments have been made from its Land Transport Disbursement Account; and

(d) Vary or revoke those requirements.

33. **Board may reduce payments in certain cases**—

(1) The Board may from time to time reduce the amount of any payments made by it—
(a) To the Authority, by such amount as it considers appropriate, if the Board considers that—

(i) The Authority has been or is, or will be likely to be, in breach of any of the provisions of this Act with respect to payments by the Authority from the State Highways Account; or

(ii) The Authority is in breach of the provisions of section 27 of this Act; or

(b) To a local authority, by such amount as it considers appropriate, if the Board considers that—

(i) The local authority has been or is, or will be likely to be, in breach of any of the provisions of this Act with respect to payments by the local authority from its Land Transport Disbursement Account; or

(ii) The local authority is in breach of the provisions of section 27 or section 31 or section 34 of this Act.

(2) Subsection (1) of this section does not limit the provisions of section 35 of this Act.

34. Board may require certain information from Authority and local authorities—

(1) The Board may from time to time require the Authority or a local authority to provide such information as the Board considers appropriate to enable the Board to determine whether the Authority or the local authority, as the case may be, is complying, and will continue to comply, with the provisions of this Act relating to payments made by the Authority from the State Highways Account or by the local authority from its Land Transport Disbursement Account.

(2) The Authority and a local authority shall promptly satisfy any requirement of the Board under subsection (1) of this section.

(3) Subsections (1) and (2) of this section do not limit the provisions of section 108 of this Act.

35. Payments may be conditional on projects being carried out to satisfactory standard—

Notwithstanding anything to the contrary in this Act, the Board, after consultation with the Authority or the local authority concerned, as the case may be, may refuse or withhold any payments or part of any payment to the Authority, or the local authority, for any approved output or capital project that has been constructed or undertaken or is proposed to be constructed or undertaken to standards that in the opinion of the Board are excessively high or unsatisfactory.

Cf. 1989, No. 75, s. 21

36. Certain payments prohibited—

Payments for an output referred to in section 3D of this Act may be made to any regional council or to any territorial authority that has any functions, duties, or powers of both a regional
council and a territorial authority, but such payments shall not be made to any other person or body.

ANNEX 1

National Roading Programme

42A. National roading programme—

(1) In each year, the Board shall approve a national roading programme for the next year, which shall include—

(a) Those outputs and capital projects recommended in the State highways programme, the regional programmes, and the district roading programmes forwarded to the Board under this Act that the Board considers should be included in the national roading programme; and

(b) The proposed funding of those outputs and capital projects for that financial year.

(2) Subject to subsections (3) and (4) of this section, a national roading programme shall be in accordance with the requirements of the performance agreement that is in force at the time of approval of that roading programme.

(3) The national roading programme shall not be inconsistent with any national land transport strategy that is in force at the time of the preparation of the programme.

(4) The Board shall ensure that only outputs and capital projects that are not inconsistent with any relevant regional transport strategy are included in a national roading programme.

(5) In complying with the requirements of this section, the Board shall have regard to the State highways programme, the regional programmes, and district roading programmes, that have been forwarded to it under this Act but shall not be bound to adopt in whole or in part any outputs or capital projects recommended in such programmes.

(6) The Board shall forward to the Authority, the Land Transport Safety Authority, the Commissioner, the Secretary, and every local authority a copy of each national roading programme approved by it.
3. Road Fund Administration Bill - Namibia

[This is a good example which appears to have taken some ideas from the Malawi legislation. It is one of the few road funds set up as a public enterprise where the power to set the road tariff has been delegated to the board, subject to a Ministerial “no objection.” It is managed by a very small board of 3-5 persons, as is Transfund New Zealand. This is often too small to ensure that all the key constituencies interested in a well financed road program, and whose support is needed to persuade the public to willingly pay for roads, are included on the board.]

Draft No 8 Dated 15 March 1997

BILL

To provide for the establishment of the Road Fund Administration to manage a road user charging system; to amend the Roads Ordinance, 1972, and the Road Traffic and Transport Act, 1997, and to provide for matters incidental thereto.

(Introduced by the Minister of Finance)

ARRANGEMENT OF SECTIONS

Section

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3. Objectives of the Administration.
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5. Vacation of office by directors and filling of vacancies.
6. Alternate directors.
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THE ROAD USER CHARGING SYSTEM

13. Determination of road user charges.
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BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Definitions

1. In this Act, unless the context otherwise requires -
   “Administration” means the Road Fund Administration established by section 0;
   “administrative expenditure” includes the cost of acquiring immovable property for administrative purposes;
   “board” means the board of directors of the Administration referred to in section 0;
   “five year plan” means a five year plan referred to in section 18;
   “Fund” means the Road Fund established by section 14;
   “local authority area” means a local authority area as defined in section 1 of the Local Authorities Act, 1992 (Act 23 of 1992), and includes any area declared to be a settlement area as defined in section 1 of the Regional Councils Act, 1992 (Act 22 of 1992);
“local authority council” means any local authority council as defined in section 1 of the said Local Authorities Act, 1992, and includes any regional council concerned as defined in section 1 of the said Regional Councils Act, 1992, in so far as it manages and controls any settlement area contemplated in the definition of “local authority area” in this section;

“Minister” means the Minister of Finance;

“motor vehicle” means a motor vehicle as defined in section 1 of the Road Traffic and Transport Act, 1997;

(Note: It should be considered whether all elements of the definition in that Act are suitable for the purposes of this Act.)

“national road network” means the national road network as defined in section 1 of the Roads Authority Act, 1997;

“one year plan” means a one year plan referred to in section 18;

“prescribe” or “prescribed” means prescribe or prescribed by regulation;

“procedures agreement” means a procedures agreement referred to in section 18;

“proclaimed road” means a proclaimed road as defined in section 1 of the Roads Ordinance, 1972 (Ordinance 17 of 1972);

“Roads Authority” means the Roads Authority established by section 2 of the Roads Authority Act, 1997;

“road user charge” means-

(a) any charge based on -

   (i) the mass of, or the number of axles, length, breadth or height of or the distance travelled on any public road by, any motor vehicle registered and licenced in Namibia or in any other country; or

   (ii) any combination of such factors;

(b) an entry fee on any motor vehicle registered and licenced in any other country;

(c) any fee to be charged for any purpose under the Road Traffic and Transport Act, 1997;

(Amendments should be made in this Act or otherwise an overriding provision in the present Bill.)

(d) a levy on every litre of petrol or diesel;
The pump price of fuel is determined by the Minister of Mines and Energy under section 2(1)(c) of the Petroleum Products and Energy Act, 1990 (Act 13 of 1990). The implications of this must be considered. Somehow the Minister of Mines and Energy must be compelled to give effect to any adjustment effected by this road user charge on the end price of every litre of fuel - otherwise the new levy cannot be recovered. Thus the Government Notice setting the new levy (section 13) can only take effect when the end price is adjusted. The Minister of Mines and Energy should be obliged to adjust the end price within e.g. three months of the date of the Government Notice. Despite these complications, it must be remembered that the body responsible for operating the road user charging system is still in the best position to set this levy since that body is concerned with the short and long term planning of the financing of the road system and not the Ministry of Mines and Energy. This body will therefore be in a better position to determine the ideal amount of the levy with a long term vision.)

“this Act” includes the regulations made thereunder.

CHAPTER I

ESTABLISHMENT OF THE ROAD FUND ADMINISTRATION

Establishment of the Road Fund Administration

2. (1) There is hereby established a body to be known as the Road Fund Administration.

(2) The Administration shall be a juristic person.

Objectives of the Administration

3. Subject to the provisions of this Act, the Administration shall, with a view to achieve safety and efficiency in the national road transport sector, and with due regard to the needs of that sector, manage the road user charging system in such a manner as to secure and allocate sufficient funding for the development and maintenance of the national road network and for certain matters related thereto.

(Note: The expression “national road transport sector”, about which there are reservations, is taken to refer to the total of both the road infrastructure (“road network” elsewhere herein) and the operation (in the economic sense) of vehicles and road transport services on the road infrastructure.)

Board of directors
4. (1) The affairs of the Administration shall be managed by a board of directors which shall consist of not less than three and not more than five directors appointed by the Minister after consultation with the Minister of Works, Transport and Communication and the Minister of Regional and Local Government and Housing, and who shall, in the opinion of the Minister, have expertise relevant to the functions of the Administration: Provided that the majority of the directors shall be persons other than staff members in the Public Service.

(Note: WR suggests to include requirements regarding the qualifications or experience of board members. See also section 5 of the Namibian Transport Advisory Board Act, 1991 (Act 23 of 1991).) NAB feels that the formulation above must be retained, further that the ideal board members are not necessarily experts, but persons experienced in the management of boards.

(2) 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.

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

(4) The chairperson of the board shall be elected by the members of the board from among their number.

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(2);

d) is removed from office by the Minister under subsection (2).
(2) If the Minister is, after consultation with the Ministers referred to in section 4(1), 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
time 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 their absence or inability to act as a director.

Remuneration of directors and alternate directors

7. A director and an alternate director shall in respect of their services be paid, out of the funds of the Administration, such remuneration and subsistence and travelling 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 or partnership of which he or she or his or her spouse is a director or shareholder or partner, is in any way directly or indirectly interested in a contract entered into or proposed to be entered into by the Administration, 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 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 two such meetings shall be held in every consecutive period of 12 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 record to be kept of the proceedings of its meetings and which shall, on request, be available for inspection by any person.

Committees of the board

10. (1) The board may from time to time establish any committee to perform, subject to such conditions as the board may determine, such functions of the board as the board may assign to it.

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

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

Executive officer and other employees
11. (1) The Administration shall appoint an executive officer for the performance of the functions of the Administration.

(Notes: The appointment can either be permanent or for a contract term. The expertise required of a person in this position must either be spelt out here or in the Memorandum.)

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

(3) If the executive officer is absent or the post of executive officer is vacant, the chairperson of the board may designate any other employee of the Administration 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 Administration shall determine the remuneration and other conditions of service of the employees of the Administration and their service benefits, including the provision or supply of medical aid benefits, housing facilities or benefits and the provision for and payment of gratuities and pensions.

(5) Subject to section 12(3), the Administration 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 Administration or assist it in the performance of its functions.

(6) Notwithstanding the provisions of any other law, the Minister may, in consultation with the Prime Minister and in accordance with the provisions of an agreement concluded with the Administration, transfer to the Administration any staff member in the Public Service as defined in section 1 of the Public Service Act, 1995 (Act 13 of 1995), but subject to such member’s consent.
Powers, duties and functions of the Administration

12. (1) The duties and functions of the Administration shall be -

a) to determine, subject to sections 16 and 17 -
   i) the total amount of the funding to be made available from the Fund
      for the purposes of section 15;
   ii) the manner in which such funding shall be allocated;

b) to determine, subject to section 13, the levels of road user charges and to
   collect such charges;

c) to manage, subject to section 14, the Fund;

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

e) to advise the Minister on any power, duty or function which he or she may
   or is required to exercise or perform in terms of this Act;

f) to advise the Minister or any local authority council on matters relating to
   the financing of the construction and maintenance of roads including advice on any relevant
   power, duty or function which he or she or it may or is required to exercise or perform in
   terms of this Act.

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

a) open banking accounts with banking institutions;

b) acquire, hire and improve property required for the exercise and
   performance of the powers, duties and functions of the Administration and to dispose of
   such property : Provided that the Administration may only acquire or dispose of
   immovable property with the consent of the Minister and subject to such conditions as he
   or she may determine;

c) 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 it considers necessary or expedient in order to
achieve the objectives of this Act.
(3) The Administration 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 Administration in respect of any matter related to the powers, duties and functions of the Administration;
  b) in writing delegate any of its powers to such person, body, organization or authority if the Administration deems it necessary for the efficient performance of an act contemplated in paragraph (a).

(4) 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 Administration for the exercise and performance of powers, duties and functions of the Administration.

CHAPTER II
THE ROAD USER CHARGING SYSTEM

Determination of road user charges

13. (1) The Administration may from time to time, but not more than once in every year, for the purposes referred to in section 15(1), by notice in the Gazette impose road user charges in accordance with the relevant provisions of any regulations made under section 22(a).

(2) The Administration shall, in determining the levels of road user charges in terms of this Act, ensure -
  a) The raising of adequate revenue for the Fund in order to ensure, over time, a balance of such revenue and the expenditure paid from the Fund, but excluding any such expenditure incurred in consequence of moneys paid into the Fund by virtue of an appropriation by Parliament or a donation or grant contemplated in paragraph (b) or (e) of section 15(1), respectively;
  b) to the extent practicable, that the levels and combinations of such charges affecting different categories of road users are equitable in relation to -
     i) the costs attributable to their use of the road network; and
     ii) the benefits which they derive from the road network; and
c) to the extent practicable, that the levels of such charges shall promote efficiency in the use of resources, including roads, motor vehicles and fuels.

(3) A notice contemplated in subsection (2) shall state -
   a) the amount of the road user charge imposed;
   b) the interest payable in the event of the non-payment or the payment in default of such charge;
   c) the times when and the manner in which such charge shall be paid;
   d) the person who shall be liable for the payment thereof;
   e) the person who shall be responsible for the collection thereof;
   f) particulars of the refunding of any road user charge contemplated in paragraph (d) of the definition of “road user charges” in section 1, in respect of -
      i) motor vehicles when they are not operated on proclaimed roads;
      ii) the use of fuel other than by motor vehicles;
   g) any other provision which the Administration may deem necessary for the efficient administration of the imposition, payment or collection of such charge or the efficient application of this subsection.

(4) Subject to considerations of national security and such conditions as may be imposed by the President for the preservation of secrecy, every ministry, office or agency as defined in section 1 of the Public Service Act, 1995 (Act 13 of 1995), or any other agency of the Government of Namibia, shall provide the Administration with such information in its possession as may reasonably be required by the Administration for the purposes of determining any road user charge under subsection (1).

Establishment of the Road Fund

14. (1) There is hereby established a fund to be known as the Road Fund into which shall be paid -
   a) all moneys collected in respect of road user charges;
   b) moneys appropriated by Parliament in pursuance of an agreement contemplated in section 16(3);
   c) any capital gains made and interest or dividends earned on investments;
d) any loan obtained by the Administration;

e) any donation or grant, including a donation or grant contemplated in section 16(3), made in respect of any road project or maintenance programme;

(Note: There are still reservations concerning the terminology “project” and “programme”.)

f) moneys which, with the consent of the Minister, may accrue to the Fund from any other source.

(Note: In view of paragraph (c) of the definition of “road user charge” in section 1 and section 14(1)(f), regard must be had to income derived under the provisions of the Road Traffic and Transport Act (for example in respect of vehicle testing stations, drivers’ licence testing centres, etc.) and the question as to whether such income or any part thereof should in fact accrue to the Fund.)

(2) The Administration shall manage the Fund in accordance with sound principles of financial management, including such measures which are necessary to ensure the liquidity of the Fund referred to in paragraph (a) of section 18(3).

(Note: A financial consultant should be requested to assist in devising the required principles and measures.)

(3) The Administration may, with the consent of the Minister and subject to such conditions as he or she may determine -

a) invest the moneys of the Fund -
   i) with any banking institution registered under section 4 of the Banks Act, 1965 (Act 23 of 1965);

   ii) with any building society registered under section 4 of the Building Societies Act, 1986 (Act 2 of 1986);

   iii) with any insurer registered under section 4 of the Insurance Act, 1943 (Act 27 of 1943);

   iv) with the Post Office Savings Bank controlled and managed by Namibia Post Limited established by section 2 of the Post and Telecommunications Companies Establishment Act, 1992 (Act 17 of 1992);
v) in securities of the Bank of Namibia;
vi) in treasury bills, bills of exchange or debentures issued under section 29 of the State Finance Act, 1991 (Act 31 of 1991);
b) borrow moneys.

Utilization of the Fund

15. (1) The Administration shall, subject to subsection (2) of this section and section 16, utilize the moneys available in the Fund for -
a) the cost of the management of the national road network as contemplated in section 13(1) of the Roads Authority Act, 1997;
(Note: This could include the repayment of loans (capital and interest) taken up for the financing of construction projects, etc.)
b) such part of the maintenance cost of any road in any local authority area, other than a road which is part of the national road network, as may be determined by the Administration;
(Note: Appropriate amendments must be made to sections 25 and 26 of the Ordinance.)
c) such part of the cost of the operation of any traffic information system as may be determined by the Administration;
d) such part of the cost of traffic law enforcement as may be determined by the Administration;
e) the transfer to the Central Road Safety Fund, established by the National Road Safety Act, 1972 (Act 9 of 1972), of such part of a road user charge contemplated in paragraph (d) of the definition of “road user charge” in section 1, as may be determined by the Minister in consultation with the Minister of Works, Transport and Communication;
f) such repayments, as may be determined by the Minister, in respect of any loan obtained by the Government of Namibia before the commencement of this Act for any purpose referred to in paragraph (a);
g) such part of the costs of the operation of vehicle testing, driver testing, overload control systems and cross-border road transportation permits, etc. as are provided for in the Road Traffic and Transport Act, 1997;
h) the payment of the administrative expenses of the Administration and the Roads Authority, respectively:

Provided that any moneys referred to in -

(i) paragraph (b) of section 14 (1) shall only be utilized for the purpose for which it is approved by Parliament as contemplated in that subparagraph;

(ii) paragraph (d) or (e) of section 14(1) shall only be utilized for the purpose for which the loan, donation or grant, as the case may be, was intended.

(Note: The effect of section 14(1)(g) must also be considered (viz. whether there should be a connection between any moneys received in respect of vehicle testing stations, etc., and the expenditure under section 14(1)(g).)

(2) No moneys shall be expended from the Fund except in accordance with a one year plan contemplated in section 17(3).

**Determination of amount of funding**

16. (1) The Administration shall, in determining the amount of the funding to be made available from the Fund and the manner in which it shall be so made available, ensure -

a) the allocation of such amount as is necessary for -

i) the achievement of the objectives of this Act;

ii) compliance by the Roads Authority with the road standards prescribed under section 19(a) and (b) of the Roads Authority Act, 1997; and

b) have regard to -

i) the availability of funds at the disposal of the Fund; and

ii) the maintenance of stability in the levels of road user charges, in real terms, in the short, medium and longer term.

(2) The Administration shall, for the purposes of subparagraph (i) of paragraph (a) of subsection (1) of this section, determine such principles as it considers necessary to be applied by the Roads Authority and every other body referred to in subsection (1) of section 17, in proposing a new project or programme as contemplated in paragraph (a) of subsection (2) of the said section 17.
(3) The provisions of subsection (1) shall not prohibit the Administration from entering into an agreement with -

a) the Minister of Works, Transport and Communication which provides for the funding, or any contribution towards the funding, of any road project or maintenance programme by virtue of money to be appropriated by Parliament;

b) any person intending to make a donation or grant for the funding, or any contribution towards the funding, of any such project or programme, to the extent that such project or programme cannot be funded by the Administration in accordance with that subsection.

**Manner of funding**

17. (1) The Administration shall, at least five months before the commencement of each financial year, provide the Roads Authority and every other body entitled to any allocation from the Fund under section 15(1), with an indicative estimate of the amount which may, in the Administration’s opinion, be made available to it during -

a) the ensuing financial year; and

b) each of the five immediately following financial years.

(2) The Roads Authority and every other body referred to in subsection (1) shall, at least three months before the commencement of each financial year, in such form and in accordance with -

a) such procedure as may be determined by the Administration; and

b) the principles referred to in section 16(2),

submit to the Administration a one year and a five year plan, which shall contain, in respect of the ensuing financial year and each of the five immediately following financial years, respectively, such particulars as may be required by the Administration relating to -

(i) each new project or programme which it proposes to be undertaken, including the estimated total cost thereof;

(ii) each project approved in any previous financial year and which is to be continued in such first financial year or in any of such five financial years; and

(iii) its estimated administrative expenses.
(3) Subject to section 16, the Administration shall after evaluation of every plan submitted to it in terms of subsection(2) and after consultation with the Roads Authority and each body concerned -

a) approve, amend or reject any proposed new project or programme or administrative expenditure contemplated in subsection (2); and

b) determine the amount of funding to be made available to the Roads Authority or such body, as the case may be, in respect of any plan or part of any plan so approved,

and include the particulars of such approval and determination in a one year and five year plan prepared in terms of section 18(1): Provided that the particulars of any project referred to in paragraph (ii) of subsection (2) shall, for the duration thereof, be so included in every one year plan concerned and funded in accordance with the terms on which it was originally included in the relevant five year plan unless the Administration and the Authority or the body concerned agree otherwise.

(4) The Administration shall, in such instalments and subject to such conditions as it may determine, pay any amount contemplated in paragraph (b) of subsection (3) to the Roads Authority or the body concerned, as the case may be.

CHAPTER III
GENERAL PROVISIONS

Plans and performance statement

18. (1) The Administration shall, after consultation with the Authority and before the commencement of each financial year, prepare a one year and five year plan which shall contain the following in respect of the ensuing financial year and each of the five immediately following financial years, respectively:

a) The particulars contemplated in section 18(3);

b) particulars of the estimated income of the Fund;

c) particulars of the proposed levels of road user charges;

d) the Administrative expenditure of the Administration; and
e) particulars of any factors which may affect the implementation of the one year and five year plan concerned and the measures which will be taken to ensure execution of any such plan.

(2) The Administration shall forthwith forward each one year and five year plan to the Minister.

(3) The Administration shall, at least one month before the commencement of each financial year, submit a draft performance statement to the Minister which shall contain the strategies which the Administration intends to employ in, and the methods by which the Administration intends to assess its performance in relation to, the exercise and performance of its powers, duties and functions in order to achieve the objectives of this Act, and including:

a) An explanation of the manner in which effect will be given to -
   i) the provisions of section 16; and
   ii) the principles referred to section (22)(a),
      in respect of the ensuing financial year;

b) such measures as are necessary to protect the liquidity of the Fund;

c) the management and financial systems to be implemented by the Administration and the principles to be applied in budgeting for administrative expenses; and

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

(4) The Minister shall, upon receipt of a draft performance statement, either approve it or return it to the Administration with directions to amend it.

(5) The Minister and the Administration may, mutatis mutandis in accordance with subsection (1), amend a performance statement from time to time.

(6) The Administration shall, before preparation of a one year and a five year plan or submission of a draft performance statement or any draft amendment of a performance statement in terms of this section, and in the prescribed manner, consult with -

a) the Namibian Transport Advisory Board established by section 2 of the Namibian Transport Advisory Board Act, 1992 (Act 23 of 1991);
b) such other interested parties as the Minister may determine.

(7) The failure of the Administration to comply with any provision of a one year or five year plan or a performance statement 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 Administration.

(8) Subject to subsection (9), every one year and five year plan and performance statement and amended performance statement shall be tabled by the Minister in the National Assembly within 28 days after -

a) the receipt of such plan; or a

b) draft performance statement or draft amendment of a performance statement has been approved or amended;

as the case may be, 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.

(9) The Administration shall publish each one year and five year plan in such manner as the Minister may determine.

Annual report

19. (1) The Administration shall within three months after the end of each financial year submit to the Minister a report on the activities of the Administration during that financial year which shall include -

a) the audited financial statements of the Administration and the Fund and an audit opinion of the Auditor-General;

b) an assessment of the Administration’s performance in relation to its performance statement;

c) such other matters as the Minister may require.
(2) The annual report referred to in subsection (1) shall be tabled in the National Assembly by the Minister within 28 days after the receipt thereof 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

20. The financial year of the Administration shall be determined by the board.

Accounting and auditing

21. (1) The Administration shall keep such account books as are necessary in accordance with internationally accepted accounting practice to reflect fairly the state of affairs and business of the Administration and the Fund and to explain the transactions and financial condition of the Administration and the Fund.

(2) The Administration shall ensure that financial statements are prepared in respect of each financial year of the Administration.

(3) The books of account and financial statements shall be audited annually to the satisfaction of the Auditor-General by an auditor registered in terms of the Public Accountants’ and Auditors’ Act, 1951 (Act 51 of 1951).

(4) The annual financial statements referred to in subsection (2) and the report of the Auditor-General shall be tabled in the National Assembly by the Minister within 14 days of receipt thereof if the National Assembly is then in ordinary session or, if the National Assembly is then not in ordinary session, within 14 days of the commencement of its ensuing ordinary session.

Regulations

22. The Minister may, after consultation with the Administration, make regulations in relation to -

a) the principles to be applied by the Administration in the calculation and imposition of road user charges;

b) the collection of road user charges;

c) the manner in which the Administration may execute or perform any power, duty or function in terms of this Act;

d) the management and control of the Fund;
e) 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 purposes of this Act.

Repeal and amendment of laws

23. The laws referred to in the Schedule are hereby repealed or amended as set out in that Schedule. (Roads Ordinance, 1972 (Ordinance 17 of 1972); Road Traffic and Transport Act, 1997)

(Note that it might be expedient to rather amend the Road Traffic and Transport Bill, which is still not finalised. - WR)

Short title and commencement

24. (1) This Act shall be called the Road Fund Administration 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 the subsection (2) in relation to such provision.
4. Legislation and Regulations Setting up a Road Fund Administration - Malawi

[This is a fairly good example and has been used as the basis for preparing the standard format for setting up a road fund under new legislation. The board operates through two sub-committees: one manages the road fund as an executive board, while the other advises the Minister on ways to strengthen road management. The road fund has been set up as a public enterprise with tariff-setting powers delegated to the board.]

Malawi National Roads Authority Act of 1997

(May 9, 1997)

An Act to make provision for the establishment of the National Roads Authority for the maintenance, rehabilitation and development of public roads; and for purposes connected therewith and incidental thereto. ENACTED by the Parliament of Malawi as follows:

PART I—PRELIMINARY

1. This Act may be cited as the National Roads Authority Act, 1997.

2. In this Act, unless the context otherwise requires—

   − “Authority” means the National Roads Authority established under section 3;
   − “Board” means the Board referred to in section 5;
   − “Fund” means the Roads Fund established under section 18;
   − “public road” has the same meaning ascribed to it in the Public Roads Act;
   − “road” has the same meaning ascribed to it in the Public Roads Act;
   − “road agency” means any institution or body whether or not incorporated, charged under any written law with the responsibility of maintaining, rehabilitating or developing public roads, and includes any institution or body designated as a roads agency by the minister by notice published in the Gazette.

PART II—ESTABLISHMENT OF NATIONAL ROADS AUTHORITY

3. There is hereby established a body to be known as the National Roads Authority (in this Act otherwise referred to as the “Authority” which shall—

   (a) be a body corporate with perpetual succession;

   (b) have a common seal;
(c) be capable of—

(i) acquiring, holding and disposing of real and personal property;
(ii) suing and being sued in its corporate name; and
(iii) doing or performing all such acts and things as a bodies corporate may by law do or perform.

4. The purpose of the Authority shall be to—

(a) ensure that public roads are maintained, rehabilitated at all times;
(b) raise funds for maintenance and rehabilitation of public roads;
(c) advise the minister and, where appropriate, the Minister responsible for local government and the Minister responsible for transport on—

(i) the preparation and the efficient and effective implementation of the annual national roads programme referred in section 25; and
(ii) the control and overloading on vehicles on public roads.

PART III—BOARD OF AUTHORITY

5. (1) The operations of the Authority shall be managed and controlled by a Board which shall consist of—

(a) the following members to be appointed by the Minister—

(i) one member nominated by and representing the Road Transport Operators Association;
(ii) one member nominated by and representing the Bus and Taxi Operators Association;
(iii) one member nominated by and representing the Tobacco Association of Malawi, the Tea Growers Association of Malawi and the sugar manufacturing industry;
(iv) one member nominated by and representing Malawi Chamber of Commerce and Industry;
(v) one member nominated by and representing local government authorities;
(vi) one member nominated by and representing the National Road Safety Council of Malawi established under the National Road Safety Council of Malawi Act;
(vii) one member nominated by and representing the National Construction Industry Council of Malawi established under the National Construction Industry Council of Malawi Act;
(viii) three members of the public representing the general interest of the public;

(b) the following ex-officio members—

(i) the Secretary for Works and Supplies, or his designated representative;
(ii) the Secretary for Local Government, or his designated representative;
(ii) the Secretary for Transport, or his designated representative;

(2) The Minister shall appoint the Chairman of the Board from amongst the members of the Board and the members of the Board shall elect a Vice Chairman from amongst their number.

(3) All ex officio member of the Board or any person employed in the public service shall not be eligible to be appointed Chairman or elected Vice Chairman of the Board but shall have the right to vote on any matter at the meetings of the Board.

(4) Members of the Board shall not, by virtue only of their appointments to the Board, be deemed to be officers in the public service.

(5) The names of all members of the Board as first constituted and every change in the membership thereof shall be published in the Gazette.

(6) A member of the Board, other than the ex officio member shall hold office for a period of three years from the date of his appointment and shall be eligible for re-appointment at the expiry of that period.

6. If a member of the Board acquires any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at the meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration by the Board, he shall at the meeting, as soon as practicable after the commencement of the meeting, disclose the fact to the Board, and shall not take part in the consideration and discussion of, or vote on any question with respect to, the contract or other matter.

7. - (1) For the better carrying into effect of the purposes for which the Authority and the Fund are established, the Board may establish such number of committees as the Board shall deem appropriate to perform such functions and responsibilities as the Board shall determine subject to the directions of the Board.

(2) The provisions of this Act relating to the meetings of the Board shall apply mutatis mutandis to the meetings of any committee.

(3) The Board shall appoint the chairman of each committee from amongst the members of the Board.

8. The Board may, in its discretion, at any time and for any length of period, co-opt any person to attend any deliberations, of the Board, but such person shall not be entitled to vote on any matter at any meeting of the Board.

9. - (1) The office of a member, other than an ex officio member, shall be vacated —

   (a) upon the expiry of the period of his appointment;

   (b) upon his death;

   (c) if he is adjudged a bankrupt;
(d) if he is sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(e) if he is convicted of an offence involving fraud or dishonesty;

(f) if he is absent, without the permission of the Board, from three successive meetings of the Board of which he has had notice;

(g) upon notice in writing of his intention to resign his office;

(h) if, in the opinion of the Board, he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Board;

(i) upon the commission of the offence referred to in section 28;

(2) Whenever there is a vacancy, in the office of a member of the Board, the Minister shall by, notice published in the Gazette, appoint —

(a) in the case of a member referred to in Section 5 (1) (i) to (vii), another person, nominated by the authority or institution which nominated the original member, to fill the vacancy; and

(b) in the case of a member referred to in section 5 (1) (a) (viii), appoint another person to fill the vacancy;

(3) Subject to section 10 (3), the Board may act notwithstanding any vacancy in the membership of the Board.

10. (1) The Board shall meet at such place or places, and at such time or times as the Chairman may determine and shall meet at least once in every two months.

(2) Ordinary meetings of the Board shall be convened by at least fourteen days written notice to the members by the Chairman, and the Chairman may, at his discretion, and shall at the written request of four or more members of the Board and within seven days of such request, cause an extraordinary meeting of the Board to be summoned at such place and time as he may appoint.

(3) The Chairman, or in his absence, the Vice Chairman shall preside at meetings of the Board, and the quorum at any meeting of the Board shall be one third of the members of the Board.

(4) In the absence of both the Chairman and Vice-Chairman, the members present and forming a quorum shall elect one of their number to preside over the meetings of the Board, and the member so elected shall exercise all the powers and perform all the duties of the Chairman.

(5) Subject to the provisions of this Act, the Board may make standing orders for the regulation of its proceedings and business or the proceedings and business of any of its committees and may vary, suspend or revoke any such standing orders.

(6) Minutes of each meeting of the Board or a committee of the Board shall be kept by the secretary and shall be confirmed at the succeeding ordinary meeting.
(7) At any meeting the decision of the Board on any matter shall be that of the majority of the members present and voting, and at all such meetings the person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberative vote.

(8) The Board shall designate any person in the employ of the Authority to be the secretary to the Board or at the meetings of any of its committees.

11. Members of the Board shall be paid from the Fund such allowances as the Board may, subject to the approval of the Minister, determine and the Board may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board or of a committee of the Board in connection with the business of the Board or the committee.

PART IV—FUNCTIONS AND POWERS OF THE BOARD

12. For achieving the purpose referred to in section 4, the Board shall—

(a) decide the allocation of financial resources required by roads agencies for the maintenance, rehabilitation and development of public roads;

(b) advise the Minister on the maintenance, rehabilitation, and development of public roads, and the prohibition of any act that may lead to damage to public roads;

(c) monitor the operations or activities undertaken by any road agency in the maintenance, rehabilitation and development of public roads;

(d) advise the Minister on the research and studies necessary for promoting the maintenance, rehabilitation and development of public roads;

(e) ensure that all tenders for the maintenance, rehabilitation or development of public roads are conducted through open and competitive bidding, in a transparent and fair manner;

(f) advise the Minister on the specifications, design standards and classification of public roads;

(g) advice Minister and the Minister responsible for transport on the types, sizes, and usage of vehicles on public roads and the laden and axle weight of vehicles for purposes of protecting public roads from damage

(h) advise the Minister on the development and training of human resources required for the maintenance, rehabilitation and development of public roads;

(i) advise the Minister and the Minister responsible for Finance on the allocation of financial resources required by the roads agencies for the maintenance, rehabilitation and development of the different classes of roads under the responsibility of the roads agencies;

(j) advise the roads agencies on the maintenance, rehabilitation and development of the different classes of public roads under their responsibility;
(k) make-such rules as the Board thinks necessary for securing the due and effective administration and management of the Fund;

(l) prepare, publish and submit to the Minister audited annual accounts of the Fund;

(m) liaise with the National Road Safety Council of Malawi established under the National Road Safety Council of Malawi Act on matters relating to safety of persons and animals on public roads;

(n) advise the Minister responsible for transport on appropriate road signs, and the road agencies on the location of road signs on public roads;

(o) recommend to the Minister, from time to time, appropriate levels of road user charges, fines, penalties, levies or any sum required to be collected under this Act and paid into the Fund;

(p) recommend to the Minister responsible for energy, from time to time, such reviews in fuel levies as are necessary for the purposes of the Fund;

(q) recommend to the Minister and the Minister responsible for land matters the reservation of land for public roads and for diversions and detours of public roads under maintenance, rehabilitation or development;

(r) identify and recommend to the Minister, donor funding for the maintenance, rehabilitation and development of public roads

(s) prescribe measures for preventing damage however cause by any person to any public road or any part thereof and for recovering, in full or in part, the cost of repairing the damage from such person or his insurers;

(t) advise the Inspector General of Police or the roads agencies, as the case may be, on appropriate and effective methods of enforcing road traffic legislation for the purposes of preventing damage to public roads and promoting road safety;

(u) ensure that roads agencies carry out effective, monitoring of the condition of all public roads for the purposes of timely implementation of road maintenance, rehabilitation and development programmes;

(v) publish periodic reports of the activities and achievement of the Authority and make the reports available to the general public;

(w) advise the Minister and the Minister responsible for transport on the enforcement of axle load limits of vehicles; and

(x) do all such things as are necessary for achieving the purposes for which the Authority and Fund are established.

13. For the better performance of its functions, the Board shall subject to the provisions of this Act and any other written law, have power—

(a) to raise money in the form of road user charges;
(b) to authorize any employee or agent of the Authority to enter upon any land and bring thereon vehicles equipment or other property of the Authority, and structures and do such other things as are necessary for achieving the purposes for which the authority is established;

(c) to publish, from time to time, such technical or other information as it deems necessary or expedient for the promotion of the maintenance, rehabilitation and development, or generally on the condition of public roads.

14. Subject to the Finance and Audit Act, the Board may raise on behalf of the Authority, moneys by way of loans or bank overdrafts on such reasonable terms and conditions as the Board may, in writing, agree with the lender.

15. (1) The Board shall be responsible and accountable to the Minister for ensuring efficiency, transparency and propriety—

(a) the collection and utilization of public funds under this Act;

(b) the conduct of its business; and

(c) the operations and activities of the Authority.

(2) The Board shall not disburse any money or authorize the payment of any money to any contractor engaged by a road agency to maintain or rehabilitate any public road unless the Minister has certified in writing that the work in respect of which the contractor is engaged to perform has been carried out to the required standard. [Note: Government has proposed an amendment to modify this clause and limit the Minister’s powers of prior approval to works above the threshold of K50 million equivalent.]

16. The Board shall, at such intervals as the Minister may in writing require, submit to the Minister reports and financial statements, in such form as the Minister may determine, regarding the operations and activities of the Authority, the Board and the Fund.

17. (1) If the Minister has reasonable cause to suspect that—

(a) the Board has failed to observe or perform any of the duties or obligations conferred or imposed upon it by this Act or any other written law;

(b) the Board has done or performed any act, matter or thing without due authority

he may, in his discretion, appoint a person or persons (hereinafter referred to as the "Commission of Inquiry") to inquire into such matter.

(2) The Commission of Inquiry shall determine its own procedure but the Minister may, if he deems it fit, define the terms of reference for the Commission of Inquiry.

(3) If, upon an inquiry under this section, the Minister is satisfied that the Board has done or suffered any of the acts, matters or thing, referred to in subsection (1), he may by order in writing require the Board to remedy the same within such time as he may appoint.

(4) If the Board fails to comply with an order of the Minister made under subsection (3), the Minister may, in addition to any other powers conferred on him by this Act—
(a) suspend the exercise by the Board of any of the powers conferred upon it by this Act or any other written law for such period as he may think fit;

(b) remove from office all or any of the members and, in his discretion, appoint new members pursuant to section 5,

and during such period, or as the case may be, pending the appointment of new members, confer upon any person the exercise of any powers so suspended or of the members.

(5) The expenses incidental to—

(a) any inquiry under this section; and

(b) the exercise of any of the powers of the Board under sub-section (4),

shall be paid by such person as the Minister may direct, and if, the Minister directs payment by the Board, such expenses shall be charged upon the annual revenue of the Authority or the Fund.

PART V—ESTABLISHMENT OF ROADS FUND

18. (1) There is hereby established a Fund to be known as Roads Fund (in this Act otherwise referred to as the "Fund") which shall consist of—

(a) such road user charges as the Minister may, from time to time, on the recommendation of the Board and in consultation with the Minister responsible for finance, determine by order published in the Gazette;

(b) such sums as shall be appropriated by Parliament for the purposes of the Fund;

(c) such sums or assets as may accrue to or vest in the Fund, whether in the course of the exercise by the Board of its functions or powers or otherwise;

(d) such sums or assets as may accrue to or vest in the Fund by way of grants, subsidies, bequests, donations, gifts and subscriptions, from the Government or any other person;

(e) such sums as are derived from the sale of any property, real or personal, by or on behalf of the Authority;

(f) such sums as are received by the Fund by way of voluntary contributions,

(g) penalties payable under this Act; and

(h) such sums or assets as may be donated to the Fund by any foreign government, international agency or other external body of persons, corporate or unincorporate

(2) For the purposes of this section an "external body of persons" means any body of persons, corporate or unincorporated, formed under or by virtue of the laws of any country other than Malawi.

19. (1) The purpose of the Fund shall be to finance—
(a) the administrative expenses associated with the execution of the duties and responsibilities of the Authority and the management of the Fund;

(b) routine and periodic maintenance of public roads;

(c) on a cost sharing basis, routine and periodic maintenance of roads, tracks and trails under the responsibility of such roads committees as may be established by a city, town, municipal or district council, as the case may be, for the purposes of this Act;

(d) any monetary (Contribution required to be made by the Government for the implementation and execution of a donor-funded project for the maintenance, rehabilitation or development of any public road;

(e) such road safety programmes as the Board, in consultation with the National Road Safety Council of Malawi, may determine;

(f) the human and technological resources required for enforcing limits on weights and dimensions of vehicles; and

(g) research related to the maintenance, rehabilitation and development of roads.

(2) Any surplus from the Fund, not exceeding ten percent of the total revenue collected or estimated to be collected in any financial year, may be utilized to finance such minor road works, including upgrading of existing public roads, tracks and trails, as the Board may, on the recommendation of road agencies, approve.

20. (1) The Board shall ensure that in any financial year expenditures and commitments from the Fund shall not exceed the annual income of the Fund.

(2) If, in exceptional circumstances, the income of the Fund together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Authority, the Minister responsible for finance may make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine:

Provided that any such advance shall be repaid from the income of the Fund in the next financial year.

PART VI—FINANCIAL PROVISIONS

21. (1) The Board shall cause to be kept proper books and other records of account in respect of receipts and expenditures of Fund and the Authority in accordance with acceptable principles of accounting.

(2) The accounts of the Fund and the Authority shall be audited annually by the Auditor General or by independent professional auditors appointed by the Board with the approval of the Auditor General, and the expenses of the audit shall be paid out of the Fund.

(3) The Board shall, as soon as practicable, but not later than three months after the end of the financial year of the Authority, submit to the Minister and publish in the Gazette and in at least two newspapers published and in circulation in Malawi an annual report on all the financial transactions
in Malawi an annual report or all the financial transactions of the Fund and on the work, activities and operations of the Authority.

(4) The report referred to in subsection (3) shall include a balance sheet and an income and expenditure account, and shall be laid by the Minister before the National Assembly in accordance with the Finance and Audit Act.

(5) The Authority shall at all times comply with the provisions of the Finance and Audit Act.

22.- (1) All sums received for the purposes of the Authority and the Fund shall be paid into one or more banking accounts at such bank or banks as the Board may determine, and no amount shall be withdrawn therefrom except under the authority of the Board and by means of cheques signed by such persons as are authorized in that behalf by the Board.

(2) Any part of the Fund not immediately required for the purposes of the Authority may be invested in such manner as the Board may, in its discretion, determine.

23. The financial year of the Authority and the Fund shall be the period of twelve months commencing on the 1st April of each year and ending on the 31st March of the following year:

Provided that the first financial year may be a period shorter or longer than twelve months as the Board shall determine, but in any case not longer than eighteen months.

PART VII—MANAGEMENT

24.- (1) The Board shall appoint a suitably qualified manager who shall be the chief executive officer of the Authority upon such terms and conditions as the Board shall, in its discretion, determine.

(2) The chief executive officer shall be responsible to the Board for the general performance of the functions and the exercise of the powers of the Authority and shall appoint such other professional, technical and administrative officers as the Board may deem necessary, subject to such terms and conditions as the Board shall determine.

(3) The Authority shall pay to every person in its employ such remuneration and allowances and grant to every such person such fringe benefits as it may deem appropriate.

(4) The Authority may provide for persons in its employ or their dependents, by means of insurance with an insurance company or a pension or provident fund or in any other manner whatsoever, pecuniary benefits upon retirement, death or termination of service or in the event of illness or injury.

PART VIII—ANNUAL ROADS PROGRAMMES

25. Every roads agency shall, at least six months before the commencement of every financial year, submit to the Board an annual roads programme in such form and containing such details as the Board shall specify, outlining a comprehensive plan of action for the maintenance, rehabilitation and development of public roads, tracks and trails under the charge of the roads agency, and the estimated costs of every activity required to implement the plan of action.
26.- (1) The Board shall review, individually, the annual roads programmes submitted to it by the roads agencies under section 25 and shall thereafter consolidate the annual roads programmes into one annual national roads programme which shall—

(a) specify the amounts allocated for the maintenance, rehabilitation and development of each class of roads;

(b) match the cost of implementing the annual national roads programme with revenues collected or estimated to be collected for the purpose of this Act; and

(c) identify roads requiring maintenance, rehabilitation or development in order of priority, taking into account the social and economic requirements of the country or any part thereof in which the roads are located.

27. The Board shall submit to the Minister the annual national roads programme for approval.

PART IX—OFFENCES AND PENALTY

28.- (1) Any person who appropriates or applies or causes any other person to appropriate or apply, any proceeds or assets of the Authority or the Fund otherwise than in accordance with this Act shall be guilty of an offence and shall, upon conviction, be liable to a fine of K20,000 and to imprisonment for twelve months.

(2) Any person who contravenes section 6 shall be guilty of an offence and shall, upon conviction, be liable to a fine not exceeding the value or price of the proposed contract or other matter in respect of which he falls to disclose his interest, and to imprisonment for twelve months but the fact of a person having so voted shall not invalidate any resolution or proceeding of the Board.

(3) Any person who contravenes section 22 (1) shall be guilty of an offence and shall, upon conviction, be liable to a fine of K50,000 and to imprisonment for two years.

(4) It shall not be a defence to an offence under this Act that the proceeds of the Fund have been appropriated or applied for the benefit of the public.

PART X—MISCELLANEOUS

29. Where any provision of any written law relating to public roads, road traffic or road safety is inconsistent with any provision of this Act, the provision of that written law shall be invalid to the extent of the inconsistency.

30. The Minister may, by notice published in the Gazette, make regulations for the better carrying into effect of this Act.

Passed in Parliament this fifteenth day of April, one thousand, nine hundred and ninety-seven.
In exercise of the powers conferred on me by ......., I

[Name]

Minister of Works make the following Regulations:

**Citation and Commencement**

1. These regulations may be cited as the National Road Fund Administration Regulations 1996 and shall come into operation on the date of publication in the Gazette.

**Interpretation**

2. In these regulations, unless the context otherwise requires -

   “Administration” means the National Road Fund Administration;
   “Board” means the Board of Directors of the National Road Fund Administration;
   “Appointed member” means a member of the Board of Directors;
   “Secretary” means the Executive Secretary of the National Road Fund Administration;
   “Minister” means the minister responsible for Works.

**Purpose of the Road Fund Administration**

3. The purpose of the Administration is to finance -

   (a) routine and periodic maintenance of the classified road network under the jurisdiction of the Ministry of Works;
   (b) on a cost share basis, routine and periodic maintenance of the classified road network under the jurisdiction of Urban and Rural District Councils;
   (c) on a cost share basis, routine and periodic maintenance of unclassified roads, tracks and trails under the jurisdiction of Village Development Committees;
   (d) selected road safety projects; and
   (e) a limited amount of road upgrading, rehabilitation and minor works, but only after all road maintenance requirements have been met.

4. Major new works will continue to be financed through the government’s development budget.

**Cost Share Arrangements**
5. The detailed basis of the cost-sharing arrangements will be decided by the Board, published and revised from time to time.

6. Urban and Rural District Councils will be expected to contribute their share of the costs using revenues from rates and other local taxes.

7. Individuals and communities living in areas with unclassified roads will also be entitled to receive funds for maintenance on a cost share basis. Such groups will have to register their interests in the roads, to form themselves into local roads committees, and agree on cost-sharing arrangements for maintaining the roads.

8. Local roads committees may contribute their share of the costs in the form of materials, direct labor and/or cash.

**Disbursements from the Road Fund**

9. Funds will only be disbursed for goods and services forming part of the approved Annual Road Program according to procedures to be established by the Board.

10. Work undertaken by contractors with a value over $ ... must be certified by a registered engineer and payment will then be made directly to the contractor.

11. Work undertaken by small-scale contractors, or by force account, will be subject to similar controls to be agreed between the Board and the Minister of Works.

**National Road Administration**

12. The Administration will manage the road fund and advise the Minister on all matters pertaining to the financing of roads. Among other things, the Administration will:

   (a) Improve arrangements for collecting all the fees and charges assigned to the road fund to minimize avoidance and evasion;

   (b) Institute an integrated and coordinated approach to the planning of road works by establishing the form and content of the Annual Road Program;

   (c) Establish and publish the criteria used to divide road fund revenues between the different road agencies entitled to draw on the road fund;

   (d) Review and approve the Annual Road Program prepared by the various implementing agencies;

   (e) Negotiate an annual Framework Agreement with the Ministry of Finance establishing the procedures to be followed when adjusting the road tariff during the year concerned;

   (f) Establish procedures for disbursing funds for works forming part of the approved Annual Road Program;

**Board of Directors**

13. Elected and appointed members:
(a) shall hold office for not more than 3 years from the date of appointment;
(b) may be re-appointed at the conclusion of his term of office;
(c) may resign by writing under his hand addressed to the Minister.

14. A member shall vacate his office as a member:

(a) if he has been absent from 3 consecutive meetings of the Board without the
permission of the chairman;
(b) if he is, in the opinion of the Minister, unable or unfit to discharge the functions of
a member of the Board.

15. Where a member has resigned under regulation 13 (c), or has vacated his office, that
vacancy will be filled with a new appointment in accordance with the Act and the person so
appointed shall hold office for the unexpired term of his predecessor.

Disclosure of Interest

16. If a member of the Board acquires any pecuniary interest, direct or indirect, in any contract
proposed contract or in any other matter in which private interests conflict the duties as a member
and which is the subject of consideration by the Board, shall, as soon as is aware of the interest in
the contract or proposed contract or any other matter, disclose such facts to the Board.

Meetings of the Board

17. The Board shall meet at such times and at such places as the Chairman may decide. The
Board shall meet at least once per month for regular Board meetings.

18. The Chairman shall at the written request of not less than four members of the Board
convene a special meeting of the Board to transact any extraordinary business on a date specified in
the request. A written notice shall be addressed and sent to the members at least three days prior to
the date of the meeting.

19. The Chairman or Vice-Chairman shall preside at each meeting of the Board. When the
Chairman and Vice-Chairman are both absent, the members present shall appoint a Chairman to
preside at the meeting.

20. The quorum necessary for the transaction of the business shall be five members present at
any meeting of the Board.

21. The Board decisions shall be taken by the majority vote and, when the votes are equal, the
Chairman has a casting vote, with dissenting members having the right to have their views recorded
in the minutes.

22. The minutes of every meeting of the Board shall be recorded in a register by the Secretary
of the Board and signed by the Chairman of the meeting and the Secretary.

23. The Board may co-opt non-voting observers at any of its meetings, as and when required.
24. The Board shall appoint such study groups or committees as may be necessary for the proper discharge of the functions of the Board consisting of some members and such other persons with prescribed qualifications, and define the objectives of such groups or committees.

25. Members of the Board and such other persons appointed to study groups or committees shall be paid such remuneration as may be determined by the Board and approved by Minister.

26. The Board may co-opt any person to advise it during its deliberations.

27. Subject to this regulation, the board shall regulate its own procedures.

Functions of the Board of Directors

28. The functions of the Board are:

   (a) to administer and manage the road fund;

   (b) to coordinate and ensure total and timely accountability of all funding allocated to the road fund;

   (c) to improve arrangements for collecting road user charges to minimize avoidance and evasion;

   (d) to adjust the level of the road tariff from time to time to ensure that sufficient funds are allocated for maintenance;

   (e) to institute an integrated and coordinated approach to planning of road works in Malawi by establishing the form and content of the Annual Road Program;

   (f) to provide guidance and establish procedures to be followed in the preparation of the Annual Road Program by the various road agencies;

   (g) to establish the allocation criteria to divide monies between the various categories of roads;

   (h) to review and approve the Annual Road Program;

   (i) to establish procedures for disbursing funds for the Annual Road Program;

   (j) to ensure transparency and accountability in the disbursement of the funds by, among other things, publishing an annual report;

   (k) to prepare and publish an annual report.

Executive Secretary

29. The Board shall recruit and appoint a suitable candidate to be Secretary of the Administration.

30. The Secretary shall be the chief executive and accounting officer of the Administration.
31. The Secretary shall perform such duties as are conferred on him by or under these regulations.

32. The Secretary shall attend meetings of the board but shall have no vote at such meetings.

**Secretariat of the Administration**

33. The Administration shall have a Secretariat which shall consist of:

   (a) the Secretary of the Board;

   (b) up to four qualified officers in personnel, accounting, planning and financial management;

34. The Administration may grant pensions, gratuities or retiring benefits to the officers and employees of the Secretariat and require them to contribute to any pension, provident fund or superannuation scheme.

35. If an officer holding a pensionable office in the public service is seconded to the Secretariat, the period during which he serves with the Secretariat shall, for the purpose of computation of time and amount of pension payable to him in respect of his service as a public officer, be deemed to be service in a pensionable office.

**Functions of Secretariat**

36. The Secretariat shall be responsible for the management of the road fund in accordance with the decisions of the Board.

37. Without prejudice to the generality of regulation 29, the Secretariat shall be responsible to:

   (a) keep proper accounts and records in respect of the road fund;

   (b) maintain a bank account in which shall be recorded all receipts into the road fund and all disbursement from the road fund;

   (c) prepare and submit for audit in respect of each financial year a balance sheet, a statement of income and expenditure, and a statement of cash flow in such forms and manners as the Board may prescribe;

   (d) prepare the Annual Report in such form and with such content as may be prescribed by the Board; and

   (e) arrange the business for meetings of the Board.

**Allocation of Road Fund Revenues**

38. The Annual Road Program shall allocate the revenues of the road fund to various categories of roads for the year, following the allocation criteria prescribed by the Board and such criteria may be based on the condition of the road network, the type of maintenance required (whether routine or periodic), the length of the road network, and the volume of traffic.

**Withdrawal Procedures**
39. Funds shall be withdrawn from the road fund on presentation of a cheque signed by two authorized signatories: either one member of the Board and the Secretary, or one member of the Board and a designated member of the Secretariat.

**Annual Report and Accounts**

40. As soon as possible after the close of the financial year but not later than 3 months thereafter, the Board shall submit to the Minister an annual report and audited accounts for the Administration comprising,

(a) a report on the activities of the Administration during the preceding year;

(b) a profit and loss account for the period of the financial year, and

(c) a balance sheet showing the assets and liabilities of the Administration at the close of the financial year.

41. A copy of the annual report and audited accounts of the Administration shall be submitted by the Minister to the Legislature at the earliest.

**Power of the Minister in relation to the Board of Directors**

42. The Minister may give to the Board general or specific directions in writing as to the performance of its functions and the Board shall give effect to such directions providing always that such directions are within the powers conferred on the minister under the Act.

[Name]

MINISTER OF WORKS
5. Presidential Decree Setting up a Road Fund Administration - Yemen

[This example comes from Yemen and has been translated from Arabic. The regulations governing management of the road fund are not yet available and will be added in due course. This is not a particularly well drafted decree. The only strong point is the arrangement for depositing the road maintenance levy directly into the road fund account. The main weaknesses are that the board does not contain a representative from the Ministry of Transport – which deals with the road transport industry – and contains no private sector members. It has been proposed, and accepted in principle, to add two non-voting members to represent these constituencies. The other weakness, is that the Decree makes no mention of the municipal and village council roads. These roads will eventually have to be covered by the Decree.]

REPUBLICAN RESOLUTION IN LAW NO (22), YEAR 1995
REGARDING SETTING UP THE ROAD MAINTENANCE FUND AND THE YEMENI BOARD FOR MANAGING THE ROAD MAINTENANCE FUND

The President

After reviewing the Constitution of the Yemeni Republic

And Law No (23), Year 1994, regarding the weights and dimensions of transportation vehicles

And after the Cabinet approved

Decided

CHAPTER I
NAME, DEFINITIONS AND OBJECTIVES

Article (1)

This law is called the law setting up the Roads Maintenance Fund and the Yemeni Board for managing the Roads maintenance Fund.

Article (2)

The following expressions and words have the following meanings, unless stated otherwise:

The Republic: Republic of Yemen
The Minister: The Minister of Constructions, Housing and Urban Planning
The Fund: Roads Maintenance Fund
The Board: The Yemeni Board For managing the Roads Maintenance Fund.
he Authority: The General Authority of Roads and Bridges
Article (3)

According to this law a fund shall be set up called the Roads Maintenance Fund having a legal identity and being an independent financial account to be supervised by the Minister of Constructions, Housing and Urban Planning.

Article (4)

The headquarters of the Fund shall be in Sana'a and, after Board approval, it can also set up branches in the Republic governorates through a Ministerial decision.

Article (5)

This law aims to:

1. Supply financial resources to support roads maintenance.
2. Simplify the financing procedures and implementation of maintenance projects.
3. Limit and determine the extent of the public road network in the Republic.
4. Prepare general plans for roads maintenance in the Republic.

CHAPTER 2

THE YEMENI BOARD FOR MANAGING THE ROADS MAINTENANCE FUND

Article (6)

The Fund shall have a board which shall be called the Yemeni Board for Managing the Roads Maintenance Fund as follows:

♦ The Chairman of the Board shall be appointed by a Republican Resolution based upon a proposal made by the Minister

♦ A representative from the Ministry of Constructions, Housing and Urban Planning shall be a Member

♦ A representative from the Ministry of Planning and Development shall be a Member

♦ A representative from the Ministry of Finance shall be a Member

♦ A representative from the Ministry of Local Administration shall be a Member

♦ A representative from the General Authority of Roads and Bridges shall be a Member

♦ A representative from the Ministry of Industry shall be a Member

♦ A representative from the Ministry of Oil and Mineral Resources shall be a Member
♦ The General Manager of the Executive body of the Board shall act as Secretary to the Board.

Article (7)

The above mentioned representatives shall be appointed by the Prime Minister, based on recommendations put forward by the Minister after consultation with other concerned Ministers. The grades of members should not be below that of General Manager.

Article (8)

The Board is the competent authority to approve the finance provided for all road maintenance and improvement works in the Republic. So the Board has the following responsibilities:

1. Approve plans submitted for financing road maintenance plans, strengthen and improve them and submit these plans to the Cabinet for approval as part of the State General Plan.

2. Recommend the level of the road user charges and taxes included in this law and, if needed, propose regulations to amend them.

3. Supervise the administration of the Roads Maintenance Fund according to the provisions of this law.

4. Prepare plans for training to upgrade the skills of staff employed by the Board.

Article (9)

The Board shall hold periodical meetings at least once per month. Emergency meetings may be called by the Chairman or by half of the members.

Article (10)

The Board meetings are deemed legal when attended by the majority of members. The resolutions are taken by the majority of the attendant votes. In case of equal votes the chairman shall have a casting vote. The regulations to be published in conjunction with this law shall show the procedures and rules to be followed by the Board.

Article (11)

The Board shall have technical staff and the regulations shall state their tasks.

CHAPTER 3
FUND RESOURCES

Article (12)

According to this law, the charge for use of the roads should be imposed at a rate of half a rial per 1 liter of petrol. These charges should be collected by the Yemeni Oil Company and the revenue should be deposited directly into the Fund.
Article (13)

The resources of the Fund consist of:

1. Road user charges stated in the previous article.

2. The charges and fines imposed by the law No (23) Year 1994, regarding weights and dimensions of vehicles.

3. Amounts allocated by the State in the general budget for roads maintenance.

4. The loans, grants and donations provided for roads maintenance according to the applicable regulations.

5. The Fund revenues according to the regulations of article (19) of this law.

6. Any other resources allocated for the Fund according to the applicable regulations.

Article (14)

The Fund activities should be carried out through the Executive body of the Board which undertakes the day-to-day management of the Fund, keeps the books, prepares the financial and other regular reports about its financial operations, and accounts for usage of funds. These reports shall be submitted the Board for approval. The Executive body shall also prepare the final accounts and the annual budget, and shall follow up to ensure that the Fund obtains all the revenues set out in the regulations of this law.

Article (15)

The accounts of the Fund shall be managed according to the applicable financial and accounting rules.

Article (16)

The revenues of the Fund are deemed public funds and are subject to auditing and inspection by the Central Authority of Control.

Article (17)

The Fund money may be deposited in a current account with the Central Bank or any other bank, following a decision by the Cabinet based on a recommendation from the Board.

Article (18)

The Fund balances are exempted from taxes and any other charges whatever they are.

CHAPTER 4
General and Final Provisions

Article (19)
All financial allocations, loans, grants and support stated in the budget of the bodies responsible for road maintenance shall be routed through the Fund. The Board should have copies of the documents, maps and engineering designs related to roads maintenance kept by these bodies.

Article (20)

The Board shall have an executive body consisting of technical and administrative staff appointed according to the proposed organization structure and headed by a General Manager whose post should be stated in the letter of appointment.

Article (21)

The Board has the right to make use of the Fund money for the stated objectives set down in this law and in accordance with the applicable regulations without the need to seek approval from any other body.

Article (22)

The regulations supporting this law shall include all rules and procedures to be used for implementing these regulations and should be issued by a Republican resolution, based on a recommendation submitted by the Minister.

Article (23)

The regulations dealing with the Executive Body of the Board and its organizational structure should be issued according to the Minister's recommendation.

Article (24)

Any text or regulation which contradicts the regulations of this law shall be canceled.

Article (25)

This Law is effective from the date of issue and should be published in the gazette.

Issued in the Republic Presidency - Sana'a


Abdul Aziz Abdul Ghani Saleh General Ali Abdula
The Prime Minister The President

[This draft decree has been included because of its comprehensiveness. It is also unusual in that it requires the board to call an Annual General Meeting which has to be open to the public. The public has to be informed of the meeting, and of salient points from the Annual Report, through the media and a specific list of organizations have to be invited to attend the Annual Meeting. See Schedule 2.]

DRAFT

THE NATIONAL ROADS BOARD DECREE

THE FEDERAL REPUBLIC OF NIGERIA

A Decree to establish the National Roads Board and for other matters incidental thereto or connected therewith.

THE FEDERAL GOVERNMENT OF NIGERIA hereby makes this Decree as follows:

1. (1) There is hereby established a body to be known as the National Roads Board (in this Decree referred to as “the Roads Board”)

(2) The Roads Board shall:-

(a) be a body corporate with perpetual succession and a common seal;

(b) have power to sue and be sued in its corporate name; and

(c) be capable of holding, purchasing, acquiring and disposing of property movable or immovable, for the purpose of carrying out its functions under this Decree.

(d) be an autonomous body with exclusive responsibility to manage the Road Fund with due diligence with the provisions of this Decree.

(e) not be subject to the direction, control or supervision of any authority, body or person in the performance of its function under Decree other than the Head of State, Commander-in-Chief of the Armed Forces and the Minister responsible for roads (in this Decree referred to as “Minister”).

2. (1) The governing body of the Roads Board shall be a Board of Directors (hereinafter in this Decree referred to as “the Board”).

(2) The Board shall consist of fourteen members as follows:-

(a) one member nominated by and representing each of the following organisations and whose nomination is in accordance with the normal procedure governing such nominations in the respective organisation:
(i) National Association of Chambers of Commerce, Industry, Mine and Agriculture;

(ii) Practising Farmers Association;

(iii) Nigerian Society of Engineers;

(iv) Nigeria Insurers Association;

(v) Federal Road Safety Commission or any successors charged with the same or similar functions.

(b) 2 representatives from the transport industry, one representing each of

(i) Road Transport Owners Organisations;

(ii) Road Transport Workers’ Organisations.

(c) The following ex-officio members from the Federal Civil Service:

(i) Permanent Secretary, Federal Ministry of Works and Housing;

(ii) Permanent Secretary, Federal Ministry of Finance;

(iii) Permanent Secretary, National Planning Commission;

(iv) Permanent Secretary, Federal Ministry of Transport.

(d) Managing Director of the Roads Board;

(e) Two members representing the public interest appointed on personal merit by the Minister on the recommendation of the non ex-officio members of the Board.

(3) The Chairman of the Board shall be elected by the non-officio members of the Board from amongst the non ex-officio members of the Board at the first sitting of the Board.

(4) An ex-officio member of the Board or any person employed in the public service shall not be eligible to be appointed Chairman or elected Vice-Chairman of the Board but shall be eligible to vote on any matter before the Board, except as provided for in clause 2(3).

(5) The managing Director shall not be eligible to vote on any matter brought before the Board;

(6) The members of the Board except the ex-officio members shall be appointed by the Minister in accordance with section 2(a) of this Decree.
(7) No members of the Board shall have the right to appoint any proxy to represent him at any meeting of the Board.

(8) The names of all members of the Board as first constituted and any subsequent change shall be published in the Gazette.

(9) The supplementary provisions set out in the Schedules to this Decree shall have effect in relation to the National Roads Board, its Board and the other matters therein mentioned.

3. (1) **All members of the Board except the Managing Director shall be appointed to serve as part-time members.**

(2) A member of the Board other than an ex-officio shall hold office for a period of three years from the date of his first appointment and, subject to the provisions of Section 1 of Schedule 1 of this Decree, may be re-appointed for a further term of three years only.

4. The quorum for a meeting of the Board shall be eight members including the Chairman.

PART II - OBJECTS, FUNCTIONS AND POWERS OF THE ROADS BOARD.

5. (1) The principal object of the Roads Board shall be to administer and manage the Road Fund (in this Decree referred to as “the Fund”) in such manner as to ensure the efficient and effective rehabilitation and maintenance of the national road network to acceptable standards, giving due regard to economic criteria, thereby ensuring the serviceability of the network.

(2) The Road Board shall be responsible for:-

(a) receiving monies accruing to the fund;

(b) disbursing monies from the fund to such other beneficiaries, agencies, bodies, persons or authorities as may be authorised under provisions of this Decree for the purpose of rehabilitation and maintenance of the national road network;

(c) retaining the balance of the money in the Fund after the disbursement specified in paragraph (b) of this subsection, for the discharge of its functions under this Decree;

(d) scrutinising and approving road rehabilitation and maintenance projects from roads agencies and other bodies to ensure prudent management, accountability and proper utilisation of the Fund for the purposes set out in this Decree.

6. (1) Without prejudice to the generality of the foregoing, it shall be the duty of the Roads Board to:-
(a) enter into road concession contracts for the purpose of executing relevant projects;

(b) set guidelines for the working of concessions contracts including provisions authorising concessionaires to enforce, within their concessions, regulations in force relating to vehicle axle loading.

(c) plan and manage the development and implementation of road safety standards;

(d) plan and develop strategies towards ensuring efficient and effective movement of traffic on the national road network and ensure their implementation;

(e) make policy recommendations to the Federal Government on matters relating to the national road network; and

(g) carry out such other activities as appear to it necessary or expedient for the full and efficient discharge of its functions under this Decree either alone or in association with any other person or body.

(2) The Roads Board shall have power to delegate any of its functions in this or any other section of this Decree to any agency, body, officer, employee or servant establish or appointed in accordance with the provisions of this Decree to act as its agent for the execution, performance or supervision of such function as may be delegated.

7 (1) The provisions of Section 5 notwithstanding, it shall be lawful for the Roads Board to:

(a) adopt with or without amendment such investment programmes for the safeguard of the national road network as the officers of the Board may prepare from time to time;

(b) rehabilitate, maintain and manage road infrastructure and facilities and all other buildings and works necessary for the discharge of the functions of the Roads Board under this Decree;

(c) make grants and loans to agencies and bodies with similar functions for such purposes as may be determined by the Roads Board for the furtherance of the purposes and provisions of this Decree;

(d) levy road user charges in connection with the provision of its services and collect some or any other tariffs, fees etc. Falling due for collection by it;

(e) establish and keep under review, market-oriented terms and conditions of service for its employees;

(f) accept, acquire and hold any security of any kind in any form whatsoever;
(g) exercise any power, right or privilege, in relation to any security held by the Board, that a private individual would be capable of exercising in like circumstances including power to invest, surrender, transfer or reconvey any security held by the Board whether upon exchange for other security or upon discharge;

(h) maintain a programme of technical assistance to bodies or agencies (public or private) concerned with implementation of road rehabilitation, maintenance and management and the setting of regulations and standards.

**PART III - STAFF OF THE ROADS BOARD**

8. (1) There shall be appointed by the Board with the approval of the Minister, an appropriately qualified manager as the Managing Director and Chief Executive Officer of the Road Board.

(2) The Managing Director shall, subject to the general direction of the Board, be responsible for-

(a) implementation of the decisions of the Board and the day to day administration and management of the affairs of the Roads Board;

(b) the appointment, direction and control of other employees of the Roads Board in accordance with the rules and regulations governing employees of the Roads Board; and

(c) generally, performing the functions and exercising the powers of the Roads Board.

(3) The Managing Director shall hold office on such terms and conditions as may be specified in his letter of employment and, subject thereto, on such other terms as may be determined by the Board in respect of the other employees thereto.

(4) There shall be a Secretary and Legal Adviser of the Roads Board who shall be responsible to the Managing Director for the discharge of his functions.

(5) The Secretary and Legal Adviser shall in particular be responsible for the following:

(a) keeping proper records of the proceedings of the Board and its Committees;

(b) preparation of the agenda and the minutes of such meetings;

(c) arranging for payment of fees and allowances of meetings and all other such matters;
(d) generally, performing all such other duties of a Secretary and Legal Adviser as the Board may determine from time to time.

9. (1) The Roads Board may employ such other staff as may in the opinion of the Board, be necessary to assist the Roads Board in carrying out its functions under this Decree.

(2) The terms and conditions of service of the staff employed by the Roads Board shall be as determined by the Board from time to time.

(3) The Board shall have power to establish and review from time to time market-oriented criteria for establishing the remuneration of the staff of the Roads Board.

10. The Roads Board may provide for persons in its employment or their dependants, by means of insurance with an insurance company or a pension or provident fund or in any manner whatsoever, pecuniary benefits in respect of retirement, death or termination of service or in the event of illness or injury.

11. The Roads Board shall have power to take such reasonable steps it deems fit for the purpose of advancing the skills, knowledge and performance of persons employed in the roads sector.

**PART IV - INVESTMENT PROGRAMMES**

12. (1) The Board shall, within one year of its establishment, cause to be prepared by the Roads Board, a 5-year Corporate and Investment Plan (hereinafter referred to as the “Plan”) for the fulfilment of its responsibilities under this Decree.

(2) The Plan shall be broken into yearly Action Programmes and shall contain such information, amongst others, that would allow determination of the Roads Board’s proposed investment activities over the Plan period in respect of each element of the national road network.

(3) This Plan shall constitute the basis for determining the financial needs of the Roads Board and of its sourcing, including the needed contribution of the Roads Board and of its sourcing, including the needed contribution of the fuel levy and the user charges mentioned in section 7 (1) and to the Road Fund mentioned in section 12 of this Decree.

(4) In preparing the Plan, the Roads Board shall -

(a) require road agencies to submit to it six months before the start of the financial year, their investment programme for the Plan period relative to the road network for which they have responsibility;
(b) review the submissions of the roads agencies against set financial, economic and social criteria, measurable and otherwise facilitative of the achievement of the objects of the Roads Board; and

(c) after agreeing amendments and satisfying itself of the integrity of the submissions taken singly and as a whole, consolidate the submissions and submit for the approval of the Board.

(5) The provisions of section 12 subsection (4) notwithstanding, the first plan may be prepared by the Roads Board providing that the process and methods used allows for adequate contribution into its preparation by the road agencies in a manner such as to make its intent and purpose consistent with the objective(s) of section 12 of this Decree.

(6) The Board shall consider and adopt the Plan and submit it for approval to a Committee of Ministers set up for that purpose. The Committee shall consist of Ministers responsible for National Planning, Finance, Roads, Petroleum Resources and Transport. The Committee shall sit under the Chairmanship of the Minister responsible for National Planning.

(7) Approval of the Plan by the Committee of Ministers constitutes authorisation, for budgetary purposes, for the Roads Board to implement the Plan on behalf of the Board.

(8) The Roads Board shall keep the Plan under review and update it annually, with appropriate input from the roads agencies, within a three year rolling plan cycle.

PART V - ESTABLISHMENT OF THE ROAD FUND

13. (1) There is hereby established a fund to be known as the Road Fund in this Decree referred to as “the Fund”).

(2) The sources of funds for the Fund shall include -

(a) all the monies, “fuel levy”, received from that portion of the pump price of petroleum products as may be determined from time to time as required to meet the routine and periodic maintenance needs of the national road network, rehabilitation works needed to bring the national road network into a maintainable state and up to an additional ten percent of these amounts on priority upgrading works justified on economic grounds.

(b) user charges as may be so levied by the Roads Board in accordance with paragraph (d) of Section 7 or any other section of this Decree;
(c) grants and loans to the Roads Board by the Federal, State or Local Government, Statutory Corporations in the Federation, or any agency or institutions of any such government, any international organisation, or private foundation or any person whatsoever;

(d) all such sums, are fees, charges, interests, etc. as may be payable to the Roads Board from any source whatsoever; and

(e) all other assets which may, from time to time, accrue to the Fund.

(3) The Board shall have powers to take such steps as are reasonable and effective to ensure that non-transport users of petroleum products are not unduly penalised by the introduction of the fuel levy.

PART VI - FINANCIAL PROVISIONS

14. (1) The following charges shall be defrayed out of the revenue of the Roads Board for any financial year -

(a) the remuneration and allowances of the members of the Board and those of any Committee of the Board;

(b) the salaries, remuneration, fees, allowances, pensions and gratitudes of the staff, agents, technical and other advisers or consultants of the Board;

(c) overhead cost and depreciation allowance;

(d) such minor works of a capital nature as Roads Board may deem necessary from time to time; and

(e) such other sums as the Board may approve for payment out of the revenue accruing to the Fund in respect of any financial year.

(2) The Roads Board shall insure that its funds and resources are adequate to meet the operating expenses, depreciation charges, debt servicing requirements and such percentages of its annual capital expenditure requirements as may be determined from time to time.

(3) The Road Board shall invest money standing to its credit and not for the time being required for its immediate need in secure money market securities.

15. (1) The Federal Government may guarantee by an undertaking of the Minister in such manner and on such condition as the Minister may think fit, the payment of the principal and interest of any sum or sums borrowed by the Roads Board with the approval of the Minister.
(2) Such sums may be required by the Accountant-General of the Federation for the purpose of making good the obligations of the Federal Government under the guarantee of the borrowing of the Roads Board shall be charged on the Consolidated Revenue Fund of the Federal Government.

16. The Roads Board may accept gifts of land, money or other property upon such terms and conditions, if any, as may be specified by the person or organisation making the gift, provided such terms and conditions are not inconsistent with the objectives of the Roads Board under this Decree.

17. The Road Board shall from time to time fix rates and road user charges as defined in this Decree in order to meet its financial and other objectives in accordance with Section 10, 11 and 12 of this Decree.

18. The balance of the revenue accruing to the Roads Board in any financial year shall be applied for the purpose of creating a general reserve or such other reserve as the Minister may from time to time approve.

19. It shall be lawful for the Board, with the approval of the Minister, to borrow money by issuing debentures, stock or other securities or in any other manner for and in connection with the exercise of its functions under this Decree.

20. (1) The Roads Board shall be exempted from the payment of tax on any income accruing from investments made by the Board or otherwise howsoever.

(2) The provisions of any enactment relating to the taxation of companies or trust funds shall not apply to the Roads Board or the Fund.

21. (1) The Roads Board may with the approval of the Minister and by notice published in the Gazette:

(a) make regulations for the proper carrying out of the provisions of this Decree; and

(b) prescribe penalties for offences against any regulations made under this Decree.

22. The Roads Board shall establish and operate a bank account(s) for its fund with a reputable bank or banks in the Federation. The signatories to the account(s) shall be the Managing Director and the Chief Financial Officer of the Roads Board, or in their absence their designated representative or any person duly authorised by the Board in that behalf.

23. (1) The Roads Board shall keep proper accounts of all its transactions in such form as the Board may direct, being a form that shall conform with the best and standard commercial practice and accounting standards.
(2) The form of accounts shall be such as to secure the provisions of separate information in respect of each of the main investment and administrative activities and divisions of the Roads Board.

(3) The accounts shall be audited annually by annual auditors appointed by the Board from a list of approved auditors provided by the Auditor-General of the Federation.

24. (1) The Roads Board shall, within four months after the end of each financial year, furnish the Minister with

(a) a copy of the audited accounts of the Roads Board;

(b) a copy of the general report and full report of the external auditor; and

(c) an Annual Report detailing the state of affairs of the Roads Board for the financial year, including a statement of the change in the reserve fund arising from the activities of the Board during the year reported upon and an analysis of the opportunities and constraints impacting upon the Roads Board’s performance and the actions proposed for addressing them.

(2) The Board shall cause the audited account and the Annual Report of the Roads Board to be published in the Gazette and in at least two widely read national newspapers of repute after complying with subsection (1) of this section.

(3) The Annual Report shall be available, on demand, to the public.

25. Roads shall be deemed to be goods, wares or merchandise for the purpose of the exemption under the head “AGREEMENT OR ANY MEMORANDUM OF AGREEMENT” contained in the Schedule to the Stamp Duties Legislation.

26. In this Decree, unless the context otherwise requires -

“Board” means the Board of Directors established by Section 2 (1) of this Decree.

“Committee of Ministers” means the Committee of Ministers established by Section 12(6) of this Decree.

“Fund” means the Road Fund established by Section 13(1) of this Decree.

“Financial Year” means every period of twelve months terminating on 31st day of December; provided that the first financial year may be shorter or longer than eighteen months.


“Minister” means the Minister responsible for roads.

“Member” in relation to the Board includes the Chairman;

“National road” means roads owned by the Federal, State and Local Governments,
including non-designated local and community roads, village tracks, network” paths and trails.
“Roads Board” means the National Roads Board established by Section 1 of this Decree.
“State” has the same meaning as in the Constitution of the Federal Republic of Nigeria;
“Tariffs” includes road user charges such as fuel levy, supplementary heavy vehicle licenses, international transit fees, tolls and fines for overloading, etc.
1. This Decree may be cited as the National Roads Board Decree, 1998 and shall be deemed to have come into force on the first day of
.................................................................................................
SCHEDULE 1
SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD

Tenure of Office of Members of the Board

1. (1) A member of the Board other than an ex-officio member shall hold office for the full period of his appointment except and unless he is found guilty of an offence of a dishonest fraudulent nature the penalty for which is a term of imprisonment only without option of a fine; gross misconduct capable of bringing the Board into disrepute, or is absent without notice from three consecutive meetings of the Board of which he has been duly noticed and/or becomes physically incapacitated to hold the office.

(2) Notwithstanding anything contained in the instrument by which he is appointed, member of the Board may resign his appointment in writing under his hand addressed to the Minister, and upon receipt of the letter of resignation by the Minister the appointment of the member shall cease.

(3) Whenever a vacancy occurs in membership of the Board, the Minister shall by notice published in the Gazette, appoint another person in the same manner as the original member was appointed in accordance with Section 2(a) of this Decree.

Powers of the Board to Co-opt Persons

2. Where the Board desires to obtain the advice of any person upon any matter, the Board may co-opt such person to be a member for such meeting or meetings as may be required, and any such person shall whilst so co-opted, have all the rights and privileges of a member of the Board save the he shall not be entitled to vote on any question or count towards a quorum.

3. (1) The Board may appoint one or more Committee to carry out, on behalf of the Board, such of its functions as the Board may determine.

(2) The decision of a Committee of the Board shall be of no effect until it is confirmed by the Board.

Proceedings of the Board

4. (1) The Board shall ordinarily meet for the despatch of business at such times and places as the Chairman may from time to time appoint, but not less than four times in any financial year.

(2) The Chairman shall preside all meetings of Board. In his absence the Vice-Chairman shall preside. In the absence of both, such other member of the
Board present at the meeting as the members may appoint from the meeting shall preside at the meeting.

(3) Where not less than five members of the Board request the Chairman by notice in writing signed by them, to convene an extra-ordinary meeting of the Board for the `purposes specified in the notice, the Chairman shall upon receipt of such notice convene an extra-ordinary meeting of the Board for those purposes within seven days at such place and time as he may appoint.

(4) Notwithstanding anything in the foregoing provisions of this paragraph, the first ordinary meeting of the Board shall be summoned by the Minister, who may give such directions as he thinks fit to procedure which shall be followed at that meeting.

5 (1) All questions at a meeting of the Board shall be determined by a majority of votes of the members of the Board present and voting, being members who under this paragraph are entitled to vote at such meeting.

(2) At any meeting of the Board each member thereof other than the Managing Director shall have a deliberative vote, and if there is equality of votes the Chairman at the meeting shall, if entitled to a deliberative vote, have a second or casting vote.

(3) At any meeting of the Board, the Managing Director shall not participate on formal discussion of personnel matters except at the express invitation of the Board.

(4) The minutes of meetings of the Board and its committees shall be kept by the Secretary and Legal Adviser of the Roads Board or his nominee and be confirmed at the next succeeding ordinary meeting of the Board.

(5) Subject to the provisions of the Decree and of this Schedule, the Board may make standing orders with respect to the holding of meetings of the Board, the notices to be given of such meetings, the proceedings thereat, the keeping of minutes of such proceedings and custody or the production for inspection of such.

(5) Subject as aforesaid and to any standing order made under subparagraph (4) of this paragraph, the procedure of the Board with respect to the holding of meetings shall be such as the Board may from time determine.

**Disclosure of Interest by Members of the Board**

6 (1) A member of the Board who is in any way directly or indirectly interested in a transaction of project of the Board shall disclose the nature of his interest at a meeting of the Board where the subject is first discussed by the Board, and the disclosure shall be recorded in the minute book of the Board, and the member shall not take part in any deliberation or decision of the Board with respect to that transaction or project.
(2) For the purpose of sub-paragraph (1) of this paragraph a general notice given at a meeting of the Board by a member of the Board to the effect that he is associated with any trade or business or is a member of a specified company or firm and is to be regarded as interested in any transaction or project of the Roads Board concerning that trade, business company or firm shall be regarded as interested in any transaction or project of the Roads Board concerning that trade, business company or firm shall be regarded as sufficient disclosure of his interest in relation to that transaction or project.

(3) A member of the Board need not attend in person a meeting of the Board in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to ensure that the disclosure is made by a notice which is brought up and read at the meeting.

Offices and Agencies

7. The Roads Board shall have its principal office in the Federal Capital.

The Common Seal

8. (1) The common seal of the Roads shall be such as may be determined by the Board and the affixing of the common seal shall be authenticated by the signatures of the Chairman and the Secretary and Legal Adviser, or of some other members authorised generally or specifically by the Roads Board to act for the purpose.

Any document purporting to be a document duly executed under the common seal of the Board shall be received in any court and shall, unless contrary is proved, be deemed to be so executed.

9. The validity of any proceedings of the Board shall not be affected by vacancy in the membership of the Board or by any defect in the appointment of a member of the Board, or by reason that a person not entitled to do so took part in the proceedings.

10. A person shall not by reason only of his membership of the Board be treated as holding an office of emolument under the Government of the Federation or the Government of any State of the Federation.

SCHEDULE 2

SUPPLEMENTARY PROVISIONS RELATION TO THE ANNUAL GENERAL MEETING OF THE ROAD BOARD

Holding of Annual General Meeting of the Roads Board

1. (1) The Board shall in each year call an Annual General Meeting of the Roads Board, for the consideration of, amongst other matters, the Annual Report.
(2) The Annual General Meeting shall be held within six months after the close of each financial year. It shall be open to the public who shall be given adequate notice of the meeting and of salient points from the Annual Reports through the news media. Specific invitations to the General Meeting shall be sent to the organisations and agencies listed in Section 2 below.

Organisations and Agencies to be Invited

2. The Board shall cause the following organisations and agencies to be invited to the Annual General Meeting:

(a) Corporate members of the private sector organisations represented on the Board of the National Roads Board;

(b) Members of the Board of the Institute of Director;

(c) Corporate Members of the Manufacturers Association of Nigeria not already invited by virtue of entitlement to invitation under section 2 (a) above:

(d) State Commissioners responsible for transport and road matters except that where in a state this would require invitation to be sent to two state commissioners, only the Commissioner responsible for roads shall be invited:

(e) State Commissioners responsible for economic planning;

(f) The Federal Department responsible for road policy and planning matters;

(g) The Federal Department responsible for transport policy matters;

(h) Petroleum Marketing companies; and

(i) Such other organisations and agencies, at the discretion of the Board, whose activities and mandate gives them national interest in the performance of the National Roads Board.

Proceedings of the Annual General Meeting

3. (1) The Annual General Meeting shall be chaired by the Chairman of the Board of the National Roads Board or in his absence, any other person invited for that purpose in accordance with Section 4 (2) of Schedule 1 to this Decree.

(2) Conduct of the Annual General Meeting with regard in any standing orders, procedures etc. shall be as the Board may determine from time to time except that such orders, procedures, etc. which are incompatible with the purpose and intent of Section 4 of this Decree shall be null and void.

Powers and Decisions of the Annual General Meeting
The Annual General Meeting shall have powers to consider and make recommendations upon the Audited Account and Annual Report of the Roads Board and any other relevant matter brought to the attention of the Board for discussion at the Meeting within 7 (seven) days of the publication of the Annual Report and before commencement of the Annual General Meeting.

(1) Decision of the Annual General Meeting shall be brought by the Board to the attention of the Minister within 7 (seven) days together with the Board’s recommendations upon them.

SCHEDULE 3

SUPPLEMENTARY PROVISIONS ON THE ROAD FUND

Composition of the Road Fund

1. The Road Fund shall consist of money accruing to the National Road Fund as specified in Section 13 of this Decree. For the purposes of interpretation, road user charges shall include the “fuel levy” as defined in Section 13(2) (a) of this Decree, tolls and fines for over-loading not falling due for collection by a concessionaire under a road concession agreement. Money derived by the Roads Board from international organisations either as loan or grants also are part of the Road Fund.

Collecting the Road Fund

2. The Board shall put in place cost-effective, transparent and accountable arrangements for the collection of money falling due for payment into the Road Fund. Such arrangement may include direct payment into the Road Fund by the government agencies responsible for the collection of money from which a portion is paid into the Road Board. Whichever arrangement is put in place, it shall incorporate an effective and efficient independent system for verifying amounts collected and for resolving any dispute between the Roads Board, its agent(s) and any other parties.

Setting and Adjusting Road User Charges

(1) Road user charges forming part of the Road Fund shall be set in accordance with the provisions of Section 12(3) of this Decree.

(2) The Plan referred to in Section 12(3) shall contain a framework for adjusting the value of the fuel levy consistent with Section 13(2) (a) of this Decree and of other road user charges such that these and the fuel levy shall cover all the expenses of the Roads Board.

(3) Adjustments shall be at the instance of the Road Board who, as part of their Annual Road Programme, shall indicate to the Committee of Ministers, the level of needed adjustments to the fuel levy and other road user charges. To the extent that the Annual Road Program is consistent with the Plan, the Committee of Ministers shall not unduly withhold their approval.
Allocation of the Road Fund between Expenditure Types During the first Five Year Plan Period

1 (1) The Roads Board shall use the Road Fund for the following purposes as may be contained in the Corporate and Investment Plan:

(a) routine, recurrent and periodic maintenance, rehabilitation and upgrading works;

(b) maintenance and rehabilitation of urban and rural local government roads, walkways, tracks and paths on a cost share arrangements with affected local governments and communities;

(c) road safety, traffic management and axle load control measures including physical measures, such as junction improvements, installation of traffic lights, preparation and implementation of improved traffic movement plans, awareness campaigns, etc.;

(d) overhead costs (operating costs of the Roads Board, road agencies and road management consultants, including cost for research and training).

2 Not more than 25% and not less than 15% of the Road Fund expenditures shall be on item (b) above; not more than 3% on item (c) above; and not more than 2.5% on item (d) above.

3 The allocations of the Road Fund to the various part of the national road network shall be based on the works assessed as needed to be undertaken to bring all roads to good and maintainable condition. Types of works shall be selected based on economic criteria as per section 1(4) of this Schedule.

4 The execution of routine and recurrent maintenance on the part of the road network in good and maintainable condition at any point in time shall have absolute priority over any other type of work. In the case of periodic maintenance, rehabilitation and upgrading works on individual links, the highest ranking interventions shall be selected for execution within the budget limits stated in Section 2 of this Schedule with the proviso that the absolute minimum Economic Rate of Return (ERR) of any intervention shall not be less than 20% or as may be determined by the Board from time to time.

5 Works on roads with a traffic of less than 30 vehicles per day shall be exempt from the requirement specified in sub-section 4 of this Schedule. Ranking of interventions on these roads shall be based on cost-effectiveness criteria (e.g. cost per population served). The highest ranking interventions shall be executed within the given budget limits in any annual works plan.

SCHEDULE 4

EXECUTION OF ROAD MANAGEMENT TASK BY THE ROADS BOARD

Form of Execution of Road Management Function
1. The Roads Board shall carry out its road management function through executing agencies which may be either of road management consultants, road agencies or agents of local government authorities. It shall be the duty of the Roads Board to prepare and publish guidelines and procedures as to the manner of the discharge of these functions by these executing agencies. The Board shall ensure that these guidelines and procedures are such as to ensure transparent, accountable and cost-effective performance of their duties by these agencies.

2. Without prejudice to the foregoing, the guidelines and procedures shall address issues relating to preparation and approval of plans and programmes, procurement of works, technical and financial management of works, disbursement of funds, etc.

3. It shall be the duty of the Roads Board to ensure awareness and understanding by the road agencies of these guidelines and procedures and their due implementation.

2. Any of the above executing agencies may be engaged by the Roads Board to prepare and submit to the Roads Board annual work plans (developed on the principles outlined in Schedule 3 of this decree) covering the road network under its responsibility, not later than four months before the beginning of the next fiscal year. The Roads Board will ensure their compatibility with its Corporate and Investment Plan.

3. The Roads Board shall appoint auditors to conduct annual technical and financial audits of the performance of each of the executing agencies. In the case of qualified audits, further disbursements to the entity will be blocked until an unqualified audit is received.

**Preparation and Adoption of Annual Work Plans**

1. The Roads Board will prepare and adopt manuals of procedures defining its way of collaboration with the different types of executing agencies, including financial management systems, maintenance management systems, management information systems, procurement and disbursement procedures, etc. to be adopted by the executing agencies.

2. The Roads Board will endeavour to contribute to poverty alleviation through the execution of its duties to the extent possible by encouraging the execution of works by labor based methods and by the employment of small scale contractors.

3. The Roads Board execute its duty with due regard to environmental issues.

**Definition of Terms (Paragraph 26 of the Decree)**

Network Stabilisation Program: Bringing all road to “good” and “fair” condition
Good condition: Generally roads requiring only routine maintenance, with an IRR of less than X for bituminous roads and an IRR of less than Y for gravel roads
Fair condition: Roads requiring periodic maintenance
Poor condition: Roads requiring rehabilitation or reconstruction
<table>
<thead>
<tr>
<th>Core Network</th>
<th>52,000 of federal, state and LG roads with traffic levels higher than 30VPD, other than urban LG roads, as defined in the network study prepared for RV2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Routine Maintenance</td>
<td>Road works required on a permanent basis, such as ditch clearing and bush clearing</td>
</tr>
<tr>
<td>Recurrent Maintenance</td>
<td>Road works required at intervals of less than one year, such as pothole filling, grading of gravel roads</td>
</tr>
<tr>
<td>Periodic Maintenance</td>
<td>Road works required at intervals of more than one year, such as placing overlays and seals on bituminous roads and re-gravelling of gravel roads. PM generally can only be done on roads in fair condition</td>
</tr>
<tr>
<td>Rehabilitation</td>
<td>Bringing a road back to its original condition, after maintenance has been neglected</td>
</tr>
<tr>
<td>Reconstruction</td>
<td>Some as above, but more serious neglect</td>
</tr>
<tr>
<td>Upgrading</td>
<td>Increasing the standard of a road, such as widening or strengthening</td>
</tr>
<tr>
<td>NPV</td>
<td>Net Present Value equivalent to discounted benefits minus discounted costs</td>
</tr>
<tr>
<td>ERR</td>
<td>Economic Rate of Return equivalent to discount rate at which NPV is zero</td>
</tr>
<tr>
<td>HDM</td>
<td>Highway Maintenance Model</td>
</tr>
<tr>
<td>Road Agency</td>
<td>Is an institution which fulfils the criteria set out in paragraph 1(b) of Schedule 4</td>
</tr>
</tbody>
</table>
7. Standard Format for Setting Up a Road Fund Under New Legislation

[This is a standard template which may be used to prepare basic legislation setting up an independent road fund administration. The template can be cut and pasted into “new.doc” to preserve the pre-set formats and the text can then be amended to suit.]

A BILL

entitled

An Act to make provision for the establishment of the National Road Fund Administration (the Administration) and for purposes connected therewith and incidental thereto. Enacted by the Parliament of ....... as follows:

PART I—DEFINITIONS

1. This Act may be cited as the National Road Fund Administration Act, 199.., and shall come into force on such date as the Minister shall, by notice published in the gazette, appoint.

2. In this Act, unless the context otherwise requires—

“Administration” means the National Road Fund Administration;
“Board” means the Board of Directors of the National Road Fund Administration;
“Secretary” means the Executive Secretary of the National Road Fund Administration;
“Minister” is the minister responsible for public roads......; ¹
“public road” has the same meaning as that ascribed to it in the Public Roads Act; ²
“road” has the same meaning as that ascribed to it in the Public Roads Act;
“road agency” includes any institution or body, whether or not incorporated, charged under any law with the responsibility of, or, designated as a road agency by the Minister, by notice published in the Gazette, for purposes of maintaining, rehabilitating or developing public roads.

PART II—ESTABLISHMENT OF ADMINISTRATION

3. There is hereby established a body to be known as the National Road Fund Administration of ....... which shall—

(a) be a body corporate with perpetual succession;

(b) have a common seal;

¹ It could also be the Minister of Transport, Minister of Finance, or Prime Minister’s Office.
² The Act may need to be amended if the road fund intends to finance undesignated (community) roads.
(c) be capable of—
(i) acquiring, holding and disposing of real and personal property;
(ii) suing and being sued in its corporate name; and
(iii) doing or performing all such acts and things as a body corporate may legally
    do or perform.

4. (1) The purpose of the Administration shall be to—
(a) ensure that public roads are maintained and rehabilitated at all times;
(b) raise funds for the maintenance and rehabilitation of public roads;
(c) advise the Minister on—
(i) the preparation and the efficient and effective implementation of the annual
    national roads program referred to in section ??; and
(ii) the control of overloading of vehicles on public roads.

PART III—BOARD OF DIRECTORS

5. (1) The operations of the Administration shall be managed and controlled by a Board which shall consist of the following members to be appointed by the Minister—
(a) five ex-officio members, being nominees of each of the following Ministries:

(i) Ministry of Finance,
(ii) Ministry of Works,
(iii) Ministry of Transport and Communications,
(iv) Ministry of Local Government,
(v) Ministry of Economic Planning and Development.

(b) five non-governmental members, being nominees elected from the following constituencies:

(vi) Chamber of Commerce and Industry;

(vii) Bus and Taxi Operators Association;

(viii) Road Transport Operators Association;

(ix) Institution of Engineers;

(x) National Farmers Association; and

(c) two other non-governmental, being nominees of the Board. [Alternatively,
    two members, being nominees of one urban and one rural district
council].
(2) All ex officio members shall not be officers holding office below the level of Director or equivalent and shall be appointed by their respective ministers.

(3) The members of the Board shall, at the first meeting of the Board, elect a Chairperson and Vice-Chairperson from among their members. The Chairperson shall be endorsed by the Minister.

(4) Members of the Board shall not, by virtue only of their appointments to the Board, be deemed to be officers in the public service.

(5) The names of all members of the Board as first constituted and every change in membership thereafter shall be published in the Gazette by the Minister.

(6) A member of the Board, other than an ex officio member, shall hold office for a period of three years from the date of his or her appointment and shall be eligible for re-appointment for one further term at the expiration of that period.

6. If a member of the Board acquires any pecuniary interest, direct or indirect, in any contract proposed contract or in any other matter in which private interests conflict the duties as a member and which is the subject of consideration by the Board, shall, as soon as is aware of the interest in the contract or proposed contract or any other matter, disclose such facts to the Board.

7. (1) The Board may appoint such number of committees as may be necessary for the proper discharge of the functions of the Board consisting of some members and such other persons with prescribed qualifications, and define the objectives of such groups or committees.

(2) The provisions of this Act relating to meetings of the Board shall apply mutatis mutandis to the meetings of the committees.

(3) The Board shall appoint the chairman of each committee from amongst the members of the board.

8. The Board may, in its discretion, at any time and for any length of period invite any person to attend any deliberations of the Board, but such person shall not be entitled to vote on any matter at any meeting of the board.

9. The office of a member, other than an ex officio member, shall be vacated—

(a) upon the expiry of the period of appointment;

(b) upon his death;

(c) if he is adjudged a bankrupt;

(d) if he is sentenced for an offense against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(e) if he is convicted of an offense involving fraud or dishonesty;
(f) if he has been absent from 3 consecutive meetings of the Board of which he has had notice without the permission of the chairman;

(g) if, in the opinion of the Board, he becomes by reason of mental or physical infirmity, incapable of performing his duties as a member of the Board.

10. (1) The Board shall meet at such place and at such times as the Chairperson may determine and shall meet at least once per month.

(2) Ordinary meetings of the Board shall be convened by at least fourteen days written notice to the members by the Chairman. The Chairman may, at his discretion, and shall at the written request of not less than four members of the Board and within seven days of such request, convene a special meeting of the Board to transact any extraordinary business on a date specified in the request. A written notice shall be addressed and sent to the members at least three days prior to the date of the meeting.

(3) The Chairman or, in his absence, the Vice-Chairman shall preside at each meeting of the Board. The quorum necessary for the transaction of the business shall be five members present at any meeting of the Board.

(4) When the Chairman and Vice-Chairman are both absent, the members present shall appoint a Chairman to preside at the meeting.

(5) Subject to the provisions of this Act, the Board may make standing orders for the regulation of its proceedings and business or the proceedings and business of any of its committees and may vary, suspend or revoke such standing orders.

(6) The minutes of every meeting of the Board shall be recorded in a register by the Secretary of the Board and confirmed at the next succeeding ordinary meeting.

(7) The Board decisions shall be taken by the majority vote and, when the votes are equal, the Chairman has a casting vote, with dissenting members having the right to have their views recorded in the minutes.

(8) Members of the Board shall be paid from the road fund such allowances as the Board may, subject to the approval of the Minister, determine and the Board may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board or of a committee of the Board in connection with the business of the Board or the committee.

PART IV—FUNCTIONS AND POWERS OF THE BOARD

11. The functions of the Board are:

(a) to administer and manage the road fund;

(b) ensure that all tenders for the maintenance, rehabilitation and development of public roads are conducted through open and competitive bidding, in a transparent and fair manner;
(c) to improve arrangements for collecting road user charges to minimize avoidance and evasion;

(d) to recommend to the Minister, from time to time, appropriate levels of road user charges, fines, penalties, levies or any other sums to be collected under this Act and paid into the Fund;

(e) identify and recommend to the Minister, donor funding for the maintenance, rehabilitation and development of public roads;

(f) to establish the allocation criteria to be used to divide moneys between the various road agencies;

(g) to ensure that road agencies carry out effective monitoring of the condition of all public roads for the purpose of timely implementation of road maintenance, rehabilitation and development programs;

(h) to institute an integrated and coordinated approach to planning of road works by establishing the form and content of the Annual Road Program;

(i) to provide guidance and establish procedures to be followed in the preparation of the Annual Road Program by the various road agencies;

(j) to review and approve the Annual Road Program;

(k) to establish procedures for disbursing funds for the Annual Road Program;

(l) to prepare, publish and submit to the Minister audited annual accounts of the Fund;

(m) to publish periodic reports on the activities and achievements of the Administration and make the reports available to the general public.

12. Subject to the Finance and Audit Act, the Board may raise on behalf of the Administration, moneys by way of loans or bank overdrafts on such reasonable terms and conditions as the Board may in writing agree with the lender.

13. The Board shall be responsible and accountable to the Minister for ensuring efficiency, transparency and propriety in the—

   (a) collection and utilization of public funds under this Act;
   
   (b) conduct if its business; and
   
   (c) operations and activities of the Administration.

14. [The legislation will often include a special section here outlining the procedures to be followed, and penalties which may apply, if the Minister has reason to suspect that the Board has failed in its performance, has performed any act without due authority, or has willingly participated in any fraudulent activity.]
PART V—SECRETARIAT

15. (1) The Board will be assisted by a Secretariat headed by an Executive Secretary. The Secretariat shall be responsible for the day-to-day management of the Administration and for implementation of the decisions of the Board.

(2) The Executive Secretary shall be appointed by the Board and shall perform such functions as the Board may direct or delegate to him or her. The Executive Secretary will also act as secretary to the Board.

(3) The terms and conditions of employment of the Secretariat shall be decided by the Board based on a comparison of best practice in other similar organizations.

PART VI—ESTABLISHMENT OF ROAD FUND

16. (1) There is hereby established a fund to be known as the Road Fund.

(2) The Fund shall consist of—

(a) such road user charges as may, from time to time, be determined by the Minister, by order published in the Gazette, on the recommendation of the Board;

[or, alternatively, “such road user charges as may, from time to time, be determined by the Administration and published in the Gazette in accordance with the relevant provisions of any regulations made under section 25;”]

(b) such sums that may be appropriated by Parliament for purposes of the Fund.

(c) such sums or assets as may accrue to or vest in the Fund whether in the course of the exercise by the Board of its function or powers, or otherwise;

(d) grants, subsidies, bequests, donations, gifts, subscriptions from Government or any other person;

(e) the sale of any property, real or personal, by or on behalf of the Administration;

(f) sums received by the Fund by way of voluntary contributions;

(g) penalties and fines imposed on overloaded vehicles; and

(h) sums that may be donated or loaned by any foreign government, international agency or other external body of persons, corporate or undesignated.

17. (1) The purpose of the Fund shall be to finance—

(a) the administrative expenses associated with the execution of the duties and responsibilities of the Authority and the management of the Fund;

(b) routine, recurrent and periodic maintenance of public roads;

(c) on a cost sharing basis, the routine, recurrent and periodic maintenance of local government roads and of undesignated roads, tracks and trails;
(d) any monetary contribution required to be made by the Government for the implementation and execution of a donor-funded project for the maintenance, rehabilitation or development of any public road;

(e) such road safety projects as the Board may determine.

(f) the enforcement of the limits on weights and dimensions of vehicles;

(g) research related to the maintenance and development of roads.

(2) Any surplus from the road fund, not exceeding ..... percent of the total revenue collected or estimated to be collected in any financial year, may be utilized to finance such minor road works including upgrading of existing public roads as the Board may, on the recommendation of the road agencies, approve.

18. The Board shall ensure that in any financial year expenditures and commitments from the Fund shall not exceed the annual income of the Fund. If, however, in exceptional circumstances, the income of the Fund together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Administration, the Minister of Finance may make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister may determine, provided that such advances shall be repaid from the income of the Fund in the next financial year.

**PART VII—ANNUAL ROAD PROGRAM**

19. An Annual Road Program(s) shall be prepared at least three months before the start of the new fiscal year in such form and containing such details as may be prescribed by the Board. The Program(s) shall be prepared by the road agencies responsible for maintaining the road network, or by agents designated for this purpose by the Board.

20. The Board shall review the Annual Expenditure Program and decide on -

(a) the affordability of the overall program(s); and

(b) the appropriateness of the amounts allocated for each class of road.

21. The Board shall transmit to the Minister of Public Works and Housing and the Directors of other road agencies together with the Minister of Finance the approved Annual Road Program(s).

22. Pursuant to Clause 10, the Board may recommend a rise in the level of the road tariff to ensure it generates sufficient revenues to finance the approved Annual Road Program(s), and shall provide the Minister with an estimate of the additional income to the road fund from such increases.
PART VIII—ACCOUNTS

23. (1) The Board shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the road fund in accordance with acceptable principles of accounting.

(2) The accounts of the road fund shall be audited annually by independent professional auditors nominated by the Board and approved by the Auditor General’s Office. The expenses of the audit shall be paid out of the road fund.

(3) The auditors shall complete their audit of the accounts within three months of the end of each financial year and shall include in their report assessments relating to the achievement of the objectives of the Administration, compliance with the policies, procedures and criteria established by the Board, and the effectiveness of the management of the road fund.

(4) The Board shall, as soon as practicable, but not later than six months after the end of the financial year of the Administration, submit to the Minister an annual report on all the financial transactions of the road fund and on the work, activities and operations of the Administration.

(5) The Authority shall at all times comply with the provisions of the Finance and Audit Act.

24. (1) All sums received for the purposes of the Administration shall be paid into a banking account and no amount shall be withdrawn therefrom except under the authority of the Board and by means of cheques signed by such persons as are authorized in that behalf by the Board.

(2) Any part of the road fund not immediately required for the purposes of the Administration may, on the recommendation of the Board, be invested in such manner as the Board may, in its discretion, determine.

(3) The financial year of the Authority and the Fund shall be the period of twelve months commencing on the 1st of April of each year and ending on the 31st March of the following year. The first financial year may be shorter of longer than twelve months as the Board may determine, but in any case not longer than eighteen months.

PART IX—MISCELLANEOUS

25. The Minister shall, by notice published in the Gazette, make regulations stipulating the detailed procedures to be followed by the Board regarding the works to be financed through the road fund, procedures to be followed in preparing the Annual Road Program, procedures for allocating funds between the different road agencies, arrangements for disbursing funds for road works, and the detailed financial management procedures to be followed by the Board.
Draft Regulations for the Management of the Road Maintenance Fund

NATIONAL ROAD FUND ADMINISTRATION REGULATIONS 199..

under s.25

1. These regulations may be cited as the National Road Fund Administration Regulations 199.. and shall come into operation on the date of publication in the Gazette.

under s.1

2. Within 14 days from the date of Presidential assent to the National Road Fund Administration Bill, the Minister shall cause a notice to be published in the Gazette appointing the effective date of the Act.

under s.5

3. Within 28 days from the effective date of the Act, the Minister in consultation with the various sectors required to be represented on the Board of the Authority, shall appoint members of the Board.

4. Within 14 days after expiry of the 28 days in Regulation 3, the Minister shall cause a notice of the members appointed to the Board to be published in the gazette, and specifying the place, date and hour of the first meeting of the Board.

under s.7

5. The Board may delegate any of its powers to committees consisting of such member or members of its body as it may consider fit, or expedient, and any committee so formed shall conform to any regulations of direction of the Board.

6. The Board and its sub-committees may appoint such study groups or committees as may be necessary for the proper discharge of its functions consisting of some members and other persons with such prescribed qualifications as may be required, and define the objectives of such groups or committees.

7. The Board and its sub-committees may co-opt any person to advise it during its deliberations, provided that any person so co-opted shall not be entitled to vote at any meeting of the Board or of its sub-committees.

8. For the better performance of its functions, the Board and its sub-committees shall, subject to the provisions of the Act, have power to:

(a) affiliate or cooperate with government departments, universities, technical colleges, persons engaged in the maintenance, rehabilitation or development of public roads and such other organizations, organizations or persons as may appear to the Board to be proper or beneficial to associate with;
(b) publish from time to time, such technical and other information as it deems necessary or expedient for the promotion of knowledge on the maintenance, rehabilitation and development of public roads.

under s.16

9. The road user charges referred to in section 5 (2) (a) shall consist of

(a) a surcharge on the price of gasoline and diesel fuel to be known as the fuel levy. The said fuel levy shall be a charge over and above ordinary import duties, general sales taxes and other charges on fuels, and shall be used exclusively as a source of revenue for the Road Fund.

(b) international transit charges to be paid by foreign vehicle operators using the roads of .......

(c) vehicle license fees.

The road user charges mentioned in paras (a) to (c) above shall be subject to revision by the Minister from time to time on the recommendation of the Board and upon such revision, the public shall be duly informed of the same through the press.

10. The road user charges shall, to the extent possible, be collected under contract and the proceeds shall be directly deposited into the Administration’s bank accounts. Contracts will be entered into with the Oil Companies, the Department of Customs, the Ministry of Transport and Communications, and/or with private contractors. Otherwise, the collection shall be the responsibility of the Treasury, provided that having been so collected the moneys shall without delay be transferred by the Treasury to the Road Fund.

11. The Administration shall open and maintain separate bank accounts for each of the sources of funds allocated to the Road Fund.

12. All moneys provided by international donors for the Road Fund shall be given by the donor direct to the Fund and not through the Government.

13. Disbursement of moneys from any of the accounts holding donor funds shall be subject to the provisions of section 24 and the prior authority of the relevant donor.

under s.11

14. The Road Fund shall be managed by the Board who shall:

(a) devise and put in place a mechanism for collecting road user charges;

(b) when relevant, devise and put in place arrangements for collecting from the Treasury any road user charges collected for the road fund;
(c) establish and publish the criteria to be used to divide road fund revenues between the different road agencies entitled to draw on the Road Fund, where such criteria may be based on the condition of the road network, the type of maintenance required (whether routine or periodic), the length of the road network, and the volume of traffic;

(d) negotiate an annual Framework Agreement with the Ministry of Finance establishing the procedures to be followed when adjusting the road user charges during the year concerned which shall include the general financial policies of the Administration, the maximum annual increase in the road user charges, the size of the Administration’s administrative budget, and any matters which might have an impact on the Government’s fiscal and macroeconomic policies;

(e) establish procedures for disbursing funds for works forming part of the approved Annual Road Program;

(f) establish and publish procedures which ensure that non-transport users of diesel are not unduly penalized by introduction of the road maintenance levy;

(g) advise the Minister on ways to control the overloading of vehicles, particularly on international transit routes.

15. Major upgrading and new works will continue to be financed through the government’s development budget and all financial resources made available for such purpose shall be channeled through the Road Fund.

under s.15

16. The Secretariat will consist of no more than five regular staff who shall be appointed by the Board on the recommendation of the Executive Secretary. A firm of chartered accountants, or a bank, may be appointed to act as Secretariat or to assist the Secretariat.

17. Without prejudice to the generality of these regulations, the Secretariat shall be responsible for:

(a) keeping proper accounts and records in respect of the Fund;

(b) maintaining separate bank accounts for local and donor funds respectively in which shall be recorded all receipts into the Fund and all disbursement from the Fund;

(c) preparing and submitting for audit in respect of each financial year a balance sheet, a statement of income and expenditure, and a statement of cash flow in such forms and manners as the Administration may prescribe;
(d) preparing the Annual Report of the Fund in such form and with such content as may be prescribed by the Authority; and

(e) arranging the business for meetings of the Board and its sub-committees.

18. The Administration shall, at such intervals as the Minister may, by order in writing require, submit to the Minister reports and financial statements in such form as the Minister may by like order determine, regarding the operations and activities of the Administration and the Fund.

under s.17

19. The detailed basis of the cost-sharing arrangements will be decided by the Administration and shall be published and revised from time to time.

19. Urban and Rural District Councils shall use revenue from rates, local taxes and other local revenue sources to contribute to the financing of routine and periodic maintenance of roads, tracks and trails under their responsibility.

20. Individuals and communities living in areas with unclassified roads shall also be entitled to receive funds for maintenance on a cost share basis. Such groups shall be required to register their interests in the roads, form themselves into local roads committees, and agree on cost-sharing arrangements for maintaining their roads.

21. Local roads committees may contribute their share of the costs in the form of materials, direct labor and, or alternatively, cash or by a combination of any or all of these.

22. Funds shall only be disbursed for goods and services forming part of the approved Annual Road Program according to procedures to be established by the Board.

23. Work undertaken by contractors with a value in excess of $ ... shall be certified by a registered engineer and, once so certified, payment shall be made directly to the contractor.

24. Work undertaken by small-scale contractors, or by force account, will be subject to similar controls to be agreed between the Administration, the Minister and the various District Councils.

under s.19

25. The Annual Road Program shall allocate the revenues of the road maintenance fund to various categories of roads for the year, following the allocation criteria prescribed by the Board. Without prejudice to the other factors which the Board may take into account in determining the allocation criteria, some of the major factors to consider shall be the condition of the road network, the type of maintenance required (whether routine, recurrent or resurfacing), the length of the road network, and the volume of traffic.
26. Funds shall be withdrawn from the Road Fund on presentation of a cheque signed by two authorized signatories being either the chairperson of the Board and the Secretary, or one of them and a designated member of the Secretariat.

27. In the interim, and until such time as the road agencies have developed the capacity to prepare their submissions to the Administration, the Administration may enter into a contract with local consultants for the purposes of assisting the road agencies to prepare their individual road programs.

28. The consultants so appointed shall work in close consultation with the concerned central and local government agencies to assist the various road agencies with the preparation of their road maintenance, rehabilitation and development programs, set priorities, consolidate the individual programs into an overall Annual Road Program to fit within the available resources. Such plans shall include medium-term maintenance programs and longer-term rehabilitation and development programs.
PART III: ROAD FUNDS MANAGED THROUGH AN ADVISORY BOARD

1. Advisory Board to Oversee Management of the Road Fund - Romania

[This example is taken from Romania. It was requested by the Minister after he had attended a workshop which showcased the road funds in Latvia and New Zealand. It is expected to represent a first step towards restructuring their road fund, originally set up in 1996, into a commercially managed road fund administration.]

REPUBLIC OF ROMANIA
LEGAL NOTICE NO. .. OF 1999
ESTABLISHMENT OF NATIONAL ROADS BOARD

With reference to:

Law No. ...., which established a Road Maintenance Fund;

I, Mr. Traian Basescu, Minister of Transport, give notice that I intend to establish a National Roads Board to advise me on all matters pertaining to:

(a) the financing of road rehabilitation and maintenance; and

(b) management of the Road Maintenance Fund.

Article 1: Citation and commencement

1. This notice may be cited as the National Roads Board Notice, 1999, and shall come into effect on the date of publication in the Gazette.

Article 2: Interpretation

2. In this notice, unless the context otherwise requires -

“Appointed member” means a member of the Board who is appointed by the Minister under Article 3;

“Board” means the board constituted under Article 3;

“Fund” means the Road Maintenance Fund established under Law No. ....;

“Minister” means the minister responsible for Transport;

“NAR” means the National Administration of Roads under the Ministry of Transport.

Article 3: Composition of the National Roads Board

3. The Board will be appointed by the Minister of Transport and will consist of 10 members: the Director of NAR, 3 ex-officio members representing government departments, 4 members
representing non-governmental organizations, and 2 members appointed by the Ministers on the advice of the Board. The members of the Board will be as follows:

(a) Director of NAR;

(b) 3 ex-officio members, being nominees of the following Ministries:

(2) Ministry of Finance;

(3) Department of Local Public Administration;

(4) Ministry of Transport;

(c) 4 non-governmental members, being nominees of the following organizations:

(5) Chamber of Commerce and Industry;

(6) National Association of Road Transporters;

(7) National Farmers Association;

(8) National Association of Tourism; and

(d) 2 members appointed on the advice of the Board.

4. The Minister shall cause the names of the Board appointed under Article 3 to be published in the Gazette.

5. Following consultation with the Board, the Minister will appoint one of the members as Chairman. The ex-officio members will not be below the level of Director, or equivalent

6. An appointed member:

(a) shall hold office for not more than 3 years from the date of appointment unless that officer resigns or vacates office under para. 7;

(b) may be re-appointed at the conclusion of his term of office;

(c) may resign by writing under his hand addressed to the Minister.

7. An appointed member shall vacate his office as a member:

(a) if he has been absent from 3 consecutive meetings of the Board without the permission of the Chairman;

(b) if he is, in the opinion of the Minister, unable or unfit to discharge the functions of a member of the Board.

8. Where an appointed member has resigned under para. 6 (c) or has vacated his office the Minister shall, by notice in the Gazette, fill that vacancy with a new appointment in accordance with para. 3 and the person so appointed shall hold office for the unexpired term of his predecessor.
9. If an appointed member acquires any pecuniary interest, direct or indirect, in any matter being considered by the Board, or in any other matter in which his private interests conflict with his duties as a member of the Board, he shall, as soon as he becomes aware of his interest in that matter or any other matter, disclose the facts to the Board and withdraw from all meetings at which such matters may be discussed.

10. The Board may establish sub-committees dealing with subjects like: Engineering Design and Contract Management, Road Fees, and Environment. The Board may also invite additional non-voting members to attend any of its meetings.

11. Appointed members, together with sub-committee members and non-voting members, will be paid such allowances and expenses as the Minister may from time to time determine.

**Article 4: Terms of Reference for the Board**

12. The Ministers shall, by notice published in the Gazette, set down the detailed Terms of Reference for the Board. The advice provided by the Board shall include, but not be limited to:

   (i) the overall size of the road program;
   
   (ii) the extent of coordination between the road programs prepared by NAR and the various county administrations;
   
   (iii) the need for any supplementary heavy vehicle license fees or other user fees;
   
   (iv) the way funds are divided between the different local government agencies;
   
   (v) ways to ensure that money from the road fund is actually spent on roads and that work is done according to specification;
   
   (vi) arrangements for cost-sharing with local governments to strengthen local resource mobilization;
   
   (vii) how the road user charges paid into the road fund might be revised from time to time, bearing in mind that the current charges are specified in the legislation; and
   
   (viii) the scope and quality of the audit reports and other financial reports prepared by NAR and the local government agencies receiving money from the road fund.

The Board shall also prepare a publicity program to raise public awareness of the importance of road maintenance and the need for adequate and stable funding.

13. The Board should transmit their advice to the Minister through the minutes of each Board meeting and this should be supplemented by monthly meetings between the Minister, the Chairman and the Director of NAR.

**Article 5: Meetings of the Board**

14. The Board shall meet at such times and at such places as the Chairman may decide and shall meet at least once per month for regular Board meetings.
15. The Chairman shall, at the written request of not less than four members of the Board, convene a special meeting of the Board to transact any extraordinary business on a date specified in the request. A written notice shall be addressed and sent to the members at least three days prior to the date of the meeting.

16. The Chairman shall preside at each meeting of the Board. Where the Chairman is absent, the members present shall appoint a Chairman to preside in the meeting.

17. The quorum necessary for the transaction of the business at all meetings of the Board shall be a majority of the members present, provided those members include 2 members representing government departments and 2 members representing non-governmental organizations.

18. Board decisions shall be taken by the majority vote and, when the votes are equal, the Chairman has a casting vote, with dissenting members having the right to have their views recorded in the minutes.

19. The minutes of every meeting of the Board shall be recorded in a register by the Secretary and signed by the Chairman of the meeting and the Secretary.

Article 6: Secretariat of the Board

20. The Board shall appoint a Secretary from the staff of the Ministry of Transport to assist with the work of the Board. The Secretary may be assisted in this work by other staff from the Ministry of Transport as, and when, needed.

Article 7: Functions of the Secretary

21. The Secretary shall:

(a) arrange the business for meetings of the Board;

(b) follow up on matters decided by the Board and arrange for preparation of reports and other materials requested by the Board;

(c) mobilize a publicity program to inform the public about the maintenance programs being financed from the Road Fund, assure the public that the Road Fund is well managed, and seek their support for possible increases in the level of the road user charges as and when such increases are needed; and

(d) prepare an Annual Report in such form and with such content as may be prescribed by the Board.

Article 8: Power of the Minister in Relation to the Board

13. The Minister may, in addition to the above mentioned Terms of Reference, give to the Board general or specific directions in writing as to the performance of its functions and the Board shall give effect to such directions.
PART IV: MISCELLANEOUS DOCUMENTS
Associated With Setting Up a Road Fund

The following section contains miscellaneous documents associated with setting up a road fund.

1. Draft letter sent out to invite organizations to nominate members to sit on the road fund Board.

   Ministry of .......... etc.
   Date

Address
(Ministries & Private Sector Organizations)

Dear Sir:

Invitation to Nominate a Member to the Board of the ........ Road Fund

The Minister of ........ has recently published a notice in the Gazette under section 18A of the Finance Order No. 6, 1988, as amended by Order No. 19, 1990 [or whatever legislation applies], establishing a Road Fund to finance routine and periodic maintenance of all roads in the country. The Road Fund may also finance selected road safety projects, road upgrading, rehabilitation and new works once all road maintenance requirements have been met [adapt to suit]. The revenues of the Road Fund will primarily come from vehicle license fees and a road maintenance levy added to the prices of petrol and diesel [adapt to suit]. The Road Fund will be managed by a Board consisting of a Chairman and .... members: ..... will represent key Government ministries, while the other ..... will represent road users and the business community.

I am writing to you as (Permanent Secretary/Chairman) of the (Ministry/Association) to invite you to nominate one of your (staff/members) to represent your (Ministry/Association) on the above Board. Following nomination, the members of the Board will be appointed to the Board by the Minister of ........ It is expected that the Board will meet at least once a month and that Board members will be compensated for the time spent attending Board meetings. The Board will be assisted by a small secretariat who will handle the day-to-day affairs of the Road Fund. I am attaching to this letter a copy of the Gazette Notice setting up the Road Fund to give you a better idea of the role and functions of the Board.

I would appreciate it if you could let me have your nomination within four weeks of the date of this letter.

Yours faithfully
Permanent Secretary of ........
2. **Draft letter inviting local accounting firms/banks to put forward proposals to act as Secretariat for the Road Fund.**

Ministry of ..............

etc.

Date

Address

(local accounting firms/banks)

Dear Sir/Madam:

**Invitation to Submit Proposal to Act as Secretariat for National Road Fund**

The Ministry of ........ has decided to invite proposals from local accounting firms (and/or banks) to help manage the Road Fund. The Road Fund was established to finance routine and periodic maintenance of roads, road safety programs, and some rehabilitation and minor improvements [adjust as necessary]. The revenues of the road fund consist of a surcharge added to the price of gasoline and diesel, vehicle license fees and fines for overloading. The total annual revenues of the road fund are expected to be in the region of $?? million. The Road Fund is under the overall jurisdiction of the National Roads Board who are accountable, through this Ministry, for the proper management of the Road Fund. The National Roads Board consists of a Chairman and eleven other members representing various government ministries, road users, and local government agencies [adapt as needed].

The road fund will be managed by a Secretariat which will be responsible for day-to-day management of the Road Fund and for the decisions of the Board. To ensure the road fund is well managed, the Ministry intends to appoint a firm of chartered accountants (or a bank) to help the Executive Secretary to manage the financial affairs of the Road Fund. The selected firm will be expected to develop all the financial systems needed to manage the Road Fund.

The firm will be expected to provide the following support to the Executive Secretary:

(a) Keep proper accounts and records in respect of the Road Fund;

(b) Maintain a ledger for the Road Fund bank account in which shall be recorded all receipts into the fund and all disbursements from the fund;

(c) Prepare monthly statements of revenues collected, amounts deposited into the Road Fund bank accounts, commitments entered into by the Board, authorized withdrawals, and actual withdrawals;

(d) Ensure that all monies due to the road fund have been collected and deposited into the relevant bank accounts;

(e) Design and implement collection and deposit procedures which minimize delays and reduce avoidance and evasion;

(f) Prepare and submit for audit in respect of each financial year a statement of income and expenditure, a statement of cash flow, and any other financial statements that may be requested by the Accountant-General [or equivalent];
(g) Prepare an Annual Report in such form and with such content as prescribed by the Board;

(h) Provide such other support to the Executive Secretary as he may prescribes.

I am now writing to you to invite you to put forward a proposal to help the Executive Secretary to manage the Road Fund. The same invitation is being sent to two other firms with registered offices in .............. The initial contract for this work will last for two years and the contract may then be renewed on an annual basis thereafter subject to satisfactory performance. Your proposal should include a statement setting down: (i) the type of financial systems and procedures you would recommend using for the Road Fund; (ii) the type of staffing arrangements you would propose to employ; and (iii) how you would charge for your services; and (iv) an estimate of your total fee costs for the first 12 months.

I would appreciate it if you could let me have your proposal within four weeks of the date of this letter.

Yours faithfully

Minister of ............
3. Draft statement to assist prospective accounting firms to put together their proposal to act as a secretariat to the Roads Board

Statement Of Indicative Requirements To Be Provided By

The Secretariat To The Lesotho National Roads Board

Ministry Of Finance

1. Rationale for this Statement

This statement has been produced to assist prospective accounting firms to put together their proposal to act as a secretariat to the Lesotho National Roads Board. A need for such a statement has been identified due to the unusual scope of services and because those services are as yet not comprehensively defined. A further terms of reference will be produced, based largely on this statement, in response to which the chosen firm will be required to produce a more detailed tender document.

2. Background

Low maintenance expenditures have seriously impaired the capacity of the various road authorities in Lesotho to undertake adequate road maintenance. The system has not provided sufficient funding, which has resulted over the years in a backlog of deferred maintenance and ever increasing rehabilitation costs. At the same time, road users have not been paying the full cost of the investments made for their use nor of the damage they cause on road assets. Roads are not commercial goods as access cannot be denied other than by restricting vehicle and driver licensing. Hence, it is difficult to recover fully the costs involved from road users.

Allocations for road maintenance currently come from the government’s consolidated budget. However, given the growing size of the road program and the other urgent demands on the government’s budget, it is simply not possible to allocate sufficient funds for road maintenance from the consolidated budget. It is therefore proposed to shift gradually the road sector onto a fee-for-service basis under which road users will pay directly for road maintenance. The aim is to ensure that: (i) sufficient funds are allocated for maintenance; (ii) maintenance allocations cover all roads; (iii) financial discipline is strengthened to ensure that the public gets value-for-money; and (iv) the fiscal burden on government is reduced to manageable proportions.

In order to ensure the necessary regular and adequate flow of funds and to ensure users pay at least for regular maintenance required to compensate for the damage they inflict on roads, the Government of Lesotho has created a Road Fund. This is sustained by an access fee to the network (vehicle licensing fees and fees raised at the border from vehicles entering or leaving Lesotho), and a usage fee with a levy on fuel employed as the best proxy for road usage. The latter has a direct, although imperfect, relation to distance and therefore to damage.

The Road Fund, hereafter the Fund, has been established by Legal Notice published in the Government Gazette. This specifies its purpose, sources of revenues, and its management by a representative board. The first charge of the fund is to finance routine and periodic maintenance of the network under the jurisdiction of the Ministries of Works and Local Government. The second charge is to assist in the maintenance of selected local rural and urban roads on a cost sharing basis. Village and Municipal Councils will be required to contribute significantly towards the cost of maintaining local roads, and may choose to do so by contributing direct labor. It is anticipated that
the cost of maintaining urban roads will largely be financed using revenues from rates and other local taxes. Fund revenues may also be used to finance rehabilitation and selected road safety projects. However, it will only be used to finance road upgrading and new works once all road maintenance requirements have been met.

Revenues will come initially from four main sources: (i) road toll-gate fees collected on all vehicles leaving Lesotho, including government vehicles; (ii) border fees/short-term SACU permits charged on all foreign trucks entering Lesotho; (iii) license fee collected from vehicles, especially from heavy vehicles to ensure they pay more adequately for the damage they do to the road pavement; (iv) a road maintenance levy added to the price of all transport fuels, including the fuel consumed by government. Total annual revenues of the Fund are expected to be in the region of US$11 million.

It has been found in countries having adopted road funds that major policy reforms within the road sector are unlikely to succeed without active support from the road users. Road users’ support is essential as it is they who will be paying for the roads. To gain their support requires the direct involvement by them in the decision-making and management process, and in the technical and financial control/audit of road activities. It has further been found that when such policy reforms have been implemented, then the road users are not only willing to pay extra road user charges, but also to take a very active part in the road management business. This is because they have been given an opportunity to have a say in the setting of policies including how the funds allocated for roads are spent, and to ensure that they obtain value for money from their road user charges. The Government has given road users an active role in the road sector by creating a representative Road Board, hereafter the Board. The members of the Board come from relevant institutions in both the public and the private sectors. Their role is to advise on the management of the Fund and monitor the use of the resources. The Board reports to the Ministry of Finance and is an advisory body only with Government retaining ultimate decision-making powers.

The Board consists of a chairman and eleven members, six members representing concerned government departments and five representing non-governmental organizations. The government members have been nominated by their respective Ministers, while the non-governmental members have been nominated by the organizations they represent. Additional non-voting members may be co-opted to the Board when required. Members of the Board are appointed for a period of two years and compensated for the time spent attending board meetings. Board meetings will be held at least once a month and subcommittees can be established as the Board sees fit.

The Board reviews the annual expenditure programs put forward by the various road agencies and decides, in light of these requests and in consultation with Ministry of Finance (MOF), on the overall size of the road program to be financed through the Fund. Based on these revenue requirements, it will then recommend to MOF the required levels of road users charges. The Board will also recommend how the revenues from the road fund should be divided between the various road agencies entitled to draw from the Fund, including those dealing with road safety.

The accounts and other financial statements of the Fund will be audited annually by a firm of auditors selected by the Auditor General. The audit includes a full financial audit and a selective technical audit. The Board is required to publish an annual report within six months of the end of each financial year, dealing generally with the policies and activities of the Board during the year. It must further include a copy of the audited accounts and the auditors report on the accounts.
A senior public officer has been appointed to be the Secretary to the Board who is the chief executive and accounting officer of the Fund. The legal regulations of the Fund makes provision for a secretariat to assist the Executive Secretary of the Board and it is to fulfill this service that proposals are now being sought. The Fund itself will cover all its own administrative costs including the cost of the secretariat.

3. **Secretariat Role**

The role of the Secretariat is to manage the financial affairs of the Road Fund in accordance with the decisions of the Road Board as laid down in Legal Notice No.16 of 1996.

4. **Objectives**

The role of the secretariat can be further broken down into three main objectives as follows:

i.) Ensure all user charges due to the Fund have been collected and deposited into the designated bank account.

ii.) Maintain proper accounts and records of all transactions through the Fund and provide reports as required by law and as otherwise requested by the Board.

iii.) Ensure that all disbursements made by the Fund are to finance those civil works and administrative costs which form part of the approved programme and that work is done to an acceptable standard.

5. **Indicative Scope of Services**

As section 14 (2) of Legal Notice 16, 1996 states, the scope of services is general in that the secretariat shall be responsible for the management of the Fund in accordance with the decisions of the Board. More specifically and as guidance only, the chosen accounting firm will be expected to develop and put in place all financial systems needed to manage the Fund according to sound commercial principles, including as a minimum:

i.) **Collecting Due Revenues**

The firm is to develop and establish a system to collect, deposit and monitor road fund revenues, including streamlining current procedures to reduce any delays and taking steps to minimize evasion. In particular to ensure that,

- the road maintenance levy on all eligible fuel is collected by the oil companies in South Africa and paid directly into the designated account in collaboration with the Department of Energy and relevant oil companies;

- all road toll gate and border fees are collected and deposited directly into the designated account in collaboration with the Customs and Excise Department;

- all eligible license fees are collected and deposited directly into the designated account in collaboration with the Ministry of Transport and Communications; and
any contract into which the Board may subsequently enter with a private company contracted to collect user charges on behalf of the Board is adequately monitored.

ii.) **Maintaining the Fund**

The firm will be expected to develop and employ computer-based financial systems in order to:

- keep proper accounts and records in respect of the Fund;
- keep a ledger for the Fund bank account in which shall be recorded all receipts and disbursements;
- prepare monthly statements of revenues collected, amounts deposited into the account, commitments entered into by the Board, authorized withdrawals and actual withdrawals for subsequent presentation at Board meetings;
- prepare quarterly and annual projections of revenues and planned expenditures;
- prepare and submit for audit annual accounts, which will include a Statement of Income, a Balance Sheet, and a Statement of Cash Flow, to those appointed to the task by the Auditor General;
- prepare on behalf of the Board and in such form and with such content as prescribed by the Board, a published annual report within six months of the end of each financial year (this will deal generally with the policies and activities of the Board during the year, and include a copy of the audited accounts and the auditors report on the accounts); and
- provide any such other support to the Executive Secretary as from time to time the Board might require.

iii.) **Disbursement of Funds**

The firm will be expected to control all expenditure in accordance with the decisions of the Board. In general, funds from the Road Fund will only be disbursed for goods and services forming part of an approved maintenance programme. Tasks will include to:

- receive requests for payment (a copy will go to MOF) from contractors, force account units, and firms providing consulting or administrative services;
- arrange to pay road agencies, contractors, administrative or consulting firms directly out of the road fund account within an acceptable timeframe in advance or in arrears to be decided by the Board (contracted work is more likely to be paid in arrears); and
- establish and employ procedures for ensuring that work paid for is of an acceptable quality, including making a selective technical audit of 20% of finished civil works by value and at least 5% of all requests for payment.
6. **Personnel Requirements**

The Regulations governing the Fund make allowance for the secretariat to consist of up to four qualified officers. Proposals are to include detailed CVs of proposed staff. The team is expected to include at least one chartered accountant and a professionally qualified engineer, with at least ten years experience in their respective professions. Previous experience working in or with public sector institutions would be an advantage. Proposals are required to make it clear which posts, if any, would be full time.

7. **Initial Assistance to be Provided Through the Roads Board**

Due to the unusual nature of the task, such technical assistance as deemed necessary by the Board will be provided to the firm upon request. It is anticipated that this would require no more than two person weeks. If the Board consider it necessary for a particular and unanticipated problem, a separate short term consultancy may be employed under a separate terms of reference. This consultancy would work with the secretariat to resolve the issue. No logistical support is to be provided to the firm by any government ministry.