

THE PUBLIC ROADS (AMENDMENT) BILL, 2022

MEMORANDUM

The object of this Bill is to amend the Public Roads Act, 2002 so as to—

- (a) revise the composition of the Board of the Agency and re-define its functions;
- (b) provide for the protection of execution of judgements against the property of the Agency; and
- (c) provide for matters connected with, or incidental to, the foregoing.

M. D. KABESHA,
Attorney-General

A BILL

ENTITLED

An Act to amend the Public Roads Act, 2002.

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Public Roads (Amendment) Act, 2022, and shall be read as one with the Public Roads Act, 2002, in this Act referred to as the principal Act.

Short title
Act No. 12
of 2022

5 2. Section 2 of the principal Act is amended by the insertion of the following new definitions in the appropriate places in alphabetical order:

Amendment
of section 2

“associate” has the meaning assigned to the word in the Anti-Corruption Act, 2012;

Act No. 3 of
2012

10 “Board” means the Board of the Agency constituted under section 6;

“Chairperson” means a person appointed as Chairperson of the Board under section 6;

15 “Emoluments Commission” means the Emoluments Commission established under the Constitution;

Cap. 1

“legally disqualified” means the absence of legal capacity as provided under section 4 of the Mental Health Act, 2019;

Act No. 3 of
2019

20 “relative” has the meaning assigned to the word in the Anti-Corruption Act, 2012; and

Act No. 3 of
2012

“Vice Chairperson” means the person elected as Vice-Chairperson of the Board under section 6;.

N.A.B. 9, 2022

Repeal and replacement of section 6	<p>3. The principal Act is amended by the repeal of section 6 and the substitution therefor of the following:</p>	
Board of Agency	<p>6. (1) There is constituted a Board of the Agency which consists of the following part time members appointed by the Minister:</p>	5
	<p>(a) a representative each of the Ministries responsible for</p>	
	<p>(i) local government;</p>	
	<p>(ii) infrastructure; and</p>	
	<p>(iii) finance;</p>	10
	<p>(b) a representative of the Attorney General;</p>	
	<p>(c) a representative of the Engineering Institution of Zambia;</p>	
	<p>(d) a representative of the Zambia Chartered Institute of Logistics and Transport;</p>	15
	<p>(e) the Director of the Road Transport and Safety Agency;</p>	
	<p>(f) the Director of the National Road Fund Agency; and</p>	
	<p>(g) a person with proven knowledge and experience in matters relevant to this Act.</p>	20
	<p>(2) The Director of the Road Transport and Safety Agency and the Director of the National Road Fund Agency referred to under subsection (1) (e) and (f) shall be <i>ex officio</i> members of the Board and shall have no vote.</p>	25
	<p>(3) The ministries and institutions referred to under subsection (1) (a), (b), (c) and (d) shall nominate their representatives for appointment by the Minister.</p>	
	<p>(4) The Minister shall appoint the Chairperson from among the members.</p>	30
	<p>(5) The members shall elect the Vice-Chairperson from among themselves.</p>	

- (6) A person shall not be appointed as a member of the Board if that person—
- (a) is not a citizen;
 - (b) is an employee of the Agency;
 - 5 (c) is convicted of an offence under this Act or any written law and is sentenced to imprisonment for a period exceeding six months without the option of a fine;
 - (d) is legally disqualified; or
 - 10 (e) is an undischarged bankrupt.
4. The principal Act is amended by the repeal of section 7 and the substitution therefor of the following: Repeal and replacement of section 7
7. (1) Subject to this Act, the Board shall perform the functions of the Agency and provide strategic policy direction to the Agency. Functions of Board
- 15 (2) Despite subsection (1), the functions of the Board are to —
- (a) promote effective corporate governance of the Agency;
 - 20 (b) formulate the policies and strategies of the Agency;
 - (c) approve documents of a policy nature of the Agency; and
 - 25 (d) approve the annual budget estimates and financial statements of the Agency.
5. The principal Act is amended by the repeal of section 8 and the substitution therefor of the following: Repeal and replacement of section 8
8. (1) The Board may, by direction in writing and on conditions that the Board considers necessary, delegate to the Director any of its functions under this Act. Delegation of functions
- 30 (2) A delegation made under subsection (1) shall not prevent the Board from performing the function so delegated.
6. The principal Act is amended by the insertion of the following new section immediately after section 8: Insertion of section 8A

Director,
secretary and
other staff

- 8A. (1) The Board shall appoint a Director who shall be the chief executive officer of the Agency and subject to the control of the Board, responsible for the day to day administration of the Agency.
- (2) The Director shall attend meetings of the Board as an *ex-officio* member and may address those meetings, but shall not vote on any matter. 5
- (3) The Board shall appoint the Secretary and other staff that are necessary for the performance of the functions of the Board. 10
- (4) The Secretary shall perform corporate secretarial duties for the Board under the general direction of the Board and the Director.
- (5) The Emoluments Commission shall, on the recommendation of the Board, determine the emoluments of the Director, Secretary and other staff of the Agency. 15
- (6) The Board shall determine the terms and conditions of service, other than emoluments, of the Director and other staff of the Agency. 20

Insertion
of section 76A

7. The principal Act is amended by the insertion of the following new section immediately after section 76:

Execution of
judgement

- 76A. (1) Where a judgement or court order is obtained against the Agency, no execution, attachment or process of any nature shall be issued against the Agency or against any property of the Agency. 25
- (2) Despite subsection (1), the Agency shall cause to be paid out of the Agency's revenues, such amounts of money as may, by judgement or court order, be awarded against the Agency to the person entitled to the money. 30

Repeal
and replacement
of First Schedule

8. The principal Act is amended by the repeal of the First Schedule and the substitution therefor of the Schedule set out in the Appendix.

APPENDIX

(Section 8)

FIRST SCHEDULE

(Section 3)

PART I

ADMINISTRATION OF AGENCY

1. (1) The seal of the Agency shall be a device that may be determined by the Board and shall be kept by the Secretary. Seal of Agency

(2) The affixing of the seal shall be authenticated by the Chairperson or Vice Chairperson, the Director or any other person authorised in that behalf by a resolution of the Board. 5

(3) A contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required under seal, may be entered into or executed without seal on behalf of the Agency, the Director or any other person generally or specifically authorised by the Board in that behalf. 10

(4) A document purporting to be a document under the seal of the Agency shall be received in evidence and shall be deemed to be so executed or issued without further proof, unless the contrary is proved.

15 2. (1) A member of the Board shall, subject to the other provisions of this Act, hold office for a term of three years and may be re-appointed for a further and final term of three years. Tenure of office for members and vacancy

(2) A member of the Board shall, on the expiration of the term for which a member is appointed, continue to hold office until another member is appointed, but in no case shall the extension of the term exceed three months. 20

(3) The office of a member becomes vacant if that member—

- (a) dies;
- (b) is adjudged bankrupt under any written law;
- 25 (c) is absent from three consecutive meetings of the Board, of which the member has had notice, without the prior approval of the Board;
- (d) resigns by notice, in writing, to the Minister;

	(e) is legally disqualified from performing the functions of a member;	
	(f) is convicted of an offence under this Act or any written law and is sentenced to imprisonment for a period exceeding six months without the option of a fine; or	5
	(g) ceases to be a representative of the ministry, institution, or organisation that nominated the member.	
	(4) The Minister shall, where there is a vacancy in the membership of the Board, appoint another person to replace that member but the person appointed shall hold office for the remainder of that term.	10
Proceedings of Board	3. (1) Subject to this Act, the Board may regulate its own procedure.	15
	(2) The Board shall meet at least once every three months for the transaction of business at a place and time that the Board may determine.	
	(3) The Chairperson may, on giving notice of not less than fourteen days, call a meeting of the Board, if one third or more of the members so request, in writing, except that if the urgency of a particular matter does not permit the giving of notice, a special meeting may be called on giving shorter notice.	20
	(4) Five members of the Board shall form a quorum at a meeting of the Agency.	25
	(5) There shall preside at a meeting of the Board—	
	(a) the Chairperson;	
	(b) in the absence of the Chairperson, the Vice Chairperson; or	
	(c) in the absence of both the Chairperson and the Vice-Chairperson, a member elected from among the members present at the meeting for the purpose of that meeting.	30
	(6) A decision of the Board on any question shall be by a majority of members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote.	35

(7) Where a member is for any reason unable to attend the meeting of the Board, the member may, in writing, nominate another person from the same ministry, institution or organisation to attend the meeting in that member's place and that person shall
5 be considered to be a member for the purpose of that meeting but that person shall have no vote.

(8) The Board may invite a person whose presence is in the Board's opinion desirable to attend and participate in the deliberation of a meeting, but that person shall have no vote.

10 (9) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and any committee established by the Board.

4. (1) The Board may, for the purposes of performing its
functions, constitute committees that it considers necessary and
15 delegate to the committees any of its functions or the functions of the Agency. Committees

(2) The Board may appoint, as members of a committee, persons who are or are not members of the Board and those persons shall hold office for a period that the Board may determine.

20 (3) A committee shall have the power to invite any person whose presence, in its opinion, is desirable to attend and participate in the deliberations of the meeting of the committee but that person shall have no vote.

(4) A person presiding at a meeting of a committee shall cause
25 a record to be kept of the proceedings of the meeting and shall cause to be submitted to the Board that record, as soon as possible after a meeting of the committee.

(5) Subject to any specific or general direction of the Board and other provisions of this section, a committee may regulate its
30 own procedure at a meeting.

5. A member of the Board or any committee of the Board
shall be paid allowances that the Emoluments Commission may, Allowances
on the recommendation of the Minister, determine.

Disclosure of interest	<p>6. (1) If any person is present at a meeting of the Board or a committee of the Board at which any matter, in which that person or any member of that person’s relative or associate is directly or indirectly interested in a private capacity, is the subject of consideration, that person shall, as soon as practicable during the meeting disclose that interest and shall not, unless the Board or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to that matter.</p> <p>(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which the disclosure is made.</p>	<p>5</p> <p>10</p>
Prohibition of publication or disclosure of information to unauthorised person	<p>7. (1) A person shall not, without the consent in writing given by or on behalf of the Board or as otherwise permitted by any written law, publish or disclose to any other person, otherwise than in the course of that person’s duties, the contents of any document, communication or information whatsoever, which relates to, and which has come to that person’s knowledge in the course of, that person’s duties under this Act.</p> <p>(2) A person who contravenes subparagraph (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.</p> <p>(3) A person who, having information which to the knowledge of that person has been published or disclosed in contravention of subparagraph (1), unlawfully publishes or communicates that information to any other person, that person commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.</p> <p>(4) Nothing in this section shall be interpreted to prohibit the publication and dissemination of a final decision of the Board.</p>	<p>15</p> <p>20</p> <p>25</p> <p>30</p>
Immunity	<p>8. An action or other proceeding shall not lie or be instituted against a member of the Board, a member of the committee of a Board or a member of staff of the Agency, for or in respect of any act or thing done or omitted to be done in good faith in the exercise or performance of any of the powers or functions conferred under this Act.</p>	<p>35</p>

PART II

FINANCIAL PROVISIONS

9. (1) The Funds of the Agency consist of money that Funds of
may— Agency
- (a) be appropriated to the Agency by Parliament;
- (b) be paid to the Agency by way of fees, grants or
5 donations; and
- (c) vest in or accrue to the Agency.
- (2) The Agency may, subject to the approval of the Minister
responsible for finance —
- (a) accept monies by way of grants or donations from
10 any source in the Republic and from any source
outside the Republic;
- (b) raise, by way of loans or otherwise, money that the
Agency may require for the performance of its
functions; or
- (c) charge and collect fees in respect of programmes,
15 publications, seminars, consultancy and other
services provided by the Agency.
- (3) There shall be paid from the funds of the Agency—
- (a) salaries, allowances, loans, gratuities and pensions
20 of the staff of the Agency;
- (b) reasonable travelling and subsistence allowances for
members of the Board and members of a committee
of the Board, when engaged on the business of the
Agency and at rates that the Emoluments
25 Commission may, on the recommendation of the
Minister, determine; and
- (c) any other expenses incurred by the Agency in carrying
out its functions under this Act.
- (4) Subject to the Public Finance Management Act, 2018, the
30 Agency may invest, in a manner that the Agency considers
appropriate, funds of the Agency that the Agency does not
immediately require for the performance of the Agency's functions. Act No. 1 of
2018

Financial year	12. The financial year of the Agency shall be a period of twelve months ending on 31 st December of each year.	
Accounts	13. (1) The Board shall cause to be kept proper books of accounts and other records relating to the accounts of the Agency. (2) The accounts of the Agency shall be audited annually by the Auditor General or an auditor appointed by the Auditor General. (3) The fees for the Auditor General or an auditor appointed by the Auditor General shall be paid by the Agency.	5
Annual report	14. (1) The Board shall, as soon as practicable, but not later than ninety days after the end of the financial year, submit to the Minister a report concerning the Agency's activities during the financial year. (2) The report under subsection (1), shall include information on the financial affairs of the Agency and there shall be appended to the report— (a) an audited statement of financial position; (b) an audited statement of comprehensive income and expenditure; and (c) other information that the Minister may require. (3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report under subsection (1), lay the report before the National Assembly.	10 15 20