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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES

JOINT SITTINGS
OF THE
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING
&
DEPARTMENTAL COMMITTEE ON HOUSING, URBAN PLANNING AND PUBLIC
WORKS

REPORT ON:
THE CONSIDERATION OF SENATE AMENDMENTS TO THE AFFORDABLE HOUSING
BILL (NATIONAL ASSEMBLY BILL NO. 75 OF 2023) 2024

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THE NATIONAL ASSEMBLY	
DATE: 14 MAR 2024	
TASLED BY:	Hon Kuria Kimani, MP Chairperson, Joint Committee Finance & Housing
CLERK OF THE TABLE:	A. Shubuko

MARCH 2024

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CHAIRPERSON FORWORD

This report contains proceedings of the Joint Sitzings of Committees of the Departmental Committee on Finance and National Planning and that of Housing, Urban Planning and Public Works on its consideration of the Senate amendments to the Affordable Housing Bill (*National Assembly Bill No. 75 of 2023*) which was passed by the National Assembly on **4th December 2023** and thereafter conveyed to the Senate in accordance with provisions of Article 110(4) of the Constitution.

Subsequently, the Senate considered the Bill and passed it with amendments on Tuesday 12th February, 2024. The amendments were thereafter conveyed to the Joint Sitzings of Committees of the Departmental Committee on Finance and National Planning and that of Housing, Urban Planning and Public Works on Wednesday 13th March, 2024. The Joint Committee subsequently considered the amendments on the same day Wednesday 13th March, 2024.

The principal object of the Bill is to provide a legal framework for the establishment of the Affordable Housing Fund, access to affordable housing and in particular give effect to Article 43(1) (b) of the Constitution on the right to accessible and adequate housing. It further imposes the Affordable Housing Levy to finance the provision of affordable housing and associated social and physical infrastructure.

The Committees is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Joint Committee further wishes to thank all stakeholders who submitted their comments on the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committees and the Committee's Secretariat who made useful contributions towards the preparation and production of this report.

On behalf of the Committees of Departmental Committee on Finance and National Planning and that of Housing, Urban Development and Public Works pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Committee Report on its consideration of the Senate Amendments to the Affordable Housing Bill (N.A. Bill No. 75 of 2023).

HON. CPA KURIA KIMANI, MP
CO-CHAIRPERSON

HON. JOHANA NGENO, MP
CO-CHAIRPERSON

CHAPTER ONE

1.0 PREFACE

1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEES

1. The Departmental Committee on Finance and National Planning and Departmental Committee Housing, Urban Planning and Public Works are established under Standing Order 216 whose mandates pursuant to the Standing Order 216 (5) are as follows:
 - i) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii) *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - iii) *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - iv) *To study and review all legislation referred to it;*
 - v) *To study, assess and analyze the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - vi) *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - vii) *To examine treaties, agreements and conventions;*
 - viii) *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
 - ix) *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - x) *To examine any questions raised by Members on a matter within its mandate.*
2. Whereas, the Second Schedule to the National Assembly Standing Orders assigns the Departmental Committee on Finance and National Planning the mandate to consider matters in relation to **public finance**, *public audit policies, monetary policies, financial institutions, economy, investment policies, competition, banking, insurance, national statistics, population, revenue policies including taxation, national planning and development, digital finance, including digital currency.* The Departmental Committee on Housing, Urban Planning and Public Works is mandated to oversee **housing, public works, urban planning metropolitan affairs, housing development and build environment.**

<http://www.parliament.go.ke/sites/default/files/2023-03/NATIONAL%20ASSEMBLY%20STANDING%20ORDERS%20-%206TH%20EDITION-4-1.pdf>

1.2 COMMITTEE MEMBERSHIP

3. The Departmental Committee on Finance and National Planning and that of Housing, Urban Planning and Public Works were constituted by the House on 27th October 2022 and comprises the following Members:

Chairperson

Hon. CPA Kuria Kimani, MP
Molo Constituency

UDA Party

Vice-Chairperson

Hon. (Amb.) Langat Benjamin Kipkirui, MP
Ainamoi Constituency

UDA Party

Members

Hon. Keynan, Wehliye Adan, MP
Eldas Constituency

Jubilee Party

Hon. Oyula, Joseph H. Maero, MP
Butula Constituency

ODM Party

Hon. Mboni, David Mwalika, MP
Kitui Rural Constituency

WDM Party

Hon. Okuome Adipo Andrew, MP
Karachuonyo Constituency

ODM Party

Hon. Kipkoros, Joseph Makilap, MP
Baringo North Constituency

UDA Party

Hon. CPA Rutto Julius Kipletting, MP
Kesses Constituency

UDA Party

Hon. Biego Paul Kibichiy, MP
Chesumei Constituency

UDA Party

Hon. Sunkuyia, George Risa, MP
Kajiado West Constituency

UDA Party

Hon. Joseph K. Munyoro, MP
Kigumo Constituency

UDA Party

Hon. Sheikh Umul K Kassim, MP
Mandera County

UDM Party

Hon. Ithinji Shadrack Mwiti, MP
South Imenti Constituency

Jubilee Party

Hon. Dr. Ariko John Namoit, MP
Turkana South Constituency

ODM Party

Hon. Machele M. Soud, MP
Mvita Constituency

ODM Party

Chairperson

Hon. Johana Ng'eno Kipyegon, CBS, MP
Emurua Dikirr Constituency

UDA Party

Vice-Chairperson

Hon. Mugambi Murwithania Rindikiri, MP
Buuri Constituency

UDA Party

Members:

Hon. John Waluke Koyi, MP
Sirisia Constituency

Jubilee Party

Hon. Esther Muthoni Passaris, OGW, MP
Nairobi County Women Representative

ODM Party

Hon. Innocent Obiri Momanyi, MP
Bobasi Constituency

WDM-K Party

Hon. Joshua Kivinda Kimilu, MP
Kaiti Constituency

WDM-K Party

Hon. Samuel Kinuthia Gachobe, MP
Subukia Constituency

UDA Party

Hon. Abraham Kipsang Kirwa, MP
Mosop Constituency

UDA Party

Hon. Caleb Mutiso Mule, MP
Machakos Town Constituency

MCCP Party

Hon. (Dr.) Daniel Ogwoka Manduku, MP
Nyaribari Masaba Constituency

ODM Party

Hon. Irene Njoki Mrembo, MP
Bahati Constituency

Jubilee Party

Hon. Jane Wangechi Kagiri, OGW, MP
Laikipia County Women Representative

UDA Party

Hon. John G. Mwaniki Mukunji, MP
Manyatta Constituency

UDA Party

Hon. Maurice Kakai Bisau, MP
Kiminini Constituency

DAP-K Party

Hon. Ronald Kamwiko Karauri, MP
Kasarani Constituency

Independent

<http://www.parliament.go.ke/the-national-assembly/committees/12/finance-and-planning>

<http://www.parliament.go.ke/the-national-assembly/committees/12/transport-public-works-housing>

1.3 JOINT COMMITTEE SECRETARIAT

4. The Committee is facilitated by the following staff:

Mr. Benjamin Magut
Principal Clerk Assistant II /Head of Secretariat

Ms. Jennifer Ndeto
Deputy Director Legal Services

Mr. Benson Kamande
Clerk Assistant III

Ms Halima Hussein
Clerk Assistant I

Mr. Winfred Kambua
Clerk Assistant III

Mr. Salem Lorot
Legal Counsel I

Ms. Joyce Wachera
Hansard Reporter III

Mr. George Ndenjeshe
Fiscal Analyst III

Mr. James Macharia
Media Relations Officer

Mr. Andrew Jumanne Shangarai
Principal Serjeant-At-Arms

Mr. Simon Ouko
Ass Serjeant-At-Arms

Mr. Mwangi Muchiri
Audio Officer

Ms Penina Simeren
Legal Counsel II

Mr. Dickson Mogeni Gekara
Clerk Assistant III

Ms Rose Natecho
Clerk Assistant III

Ms. Elzy Moroto
Senior Legal Counsel

Mr. James Muguna
Research Officer II

Mr. Collins Lokitella Namulen
Fiscal Analyst III

Ms. Esther Ngechu
Senior Serjeant-At-Arms

Mr. Meldrick Kevin Sakani
Audio Recording Officer

Mr. Ambrose Nguti
Media Relations Officer III

Mr. Nelson Odida
Research Officer III

Ms. Florence Wanja
Public Communications

<http://www.parliament.go.ke/the-national-assembly/committees/12/finance-and-planning>

<http://www.parliament.go.ke/the-national-assembly/committees/12/transport-public-works-housing>

CHAPTER TWO

2.0 COMMITTEE'S CONSIDERATION OF THE SENATE AMENDMENTS TO AFFORDABLE HOUSING BILL (*NATIONAL ASSEMBLY BILL NO. 75 OF 2023*)

2.1 BACKGROUND

5. The Affordable Housing Bill (*National Assembly Bill No. 75 of 2023*) was considered and passed with amendments by the Senate on Tuesday 12th February, 2024. The amendments were sent to the National for consideration vide a message from the Speaker of the Senate to the Speaker of the National Assembly. The amendments were then committed to the Committees of the Departmental Committee on Finance and National Planning and that of Housing, Urban Planning and Public Works for consideration on **Wednesday 13th March, 2024**

2.2 SENATE AMENDMENTS TO AFFORDABLE HOUSING BILL (*NATIONAL ASSEMBLY BILL NO. 75 OF 2023*)

CLAUSE 5

THAT clause 5 of the Bill be amended in subsection (2) by deleting the words “business or company which” and substituting therefor the words “person who”.

CLAUSE 7

THAT clause 7 of the Bill be deleted and substituted with the following new clause—

Default on payment of amount of Levy.	7. Where an amount of the Levy remains unpaid after the date when it becomes due and payable by a person liable to remit the amount, a penalty equal to three per centum of the unpaid amount shall be due and payable for each month or part thereof that the amount remains unpaid and shall be summarily recovered as a civil debt for the person liable to remit the amount.
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CLAUSE 9

THAT clause 9 of the Bill be amended –

(a) in paragraph (d) by deleting the words “section 38” and substituting therefor the words “section 42”; and

(b) by inserting the following new paragraph immediately after paragraph (e)—

(ea) loans approved by the Cabinet Secretary for the time being in charge of the National Treasury;

CLAUSE 10

THAT clause 10 of the Bill be amended –

- (a) in subclause (1) by deleting the word “development” appearing immediately after the words “funds for the” and substituting therefor the words “design, development and maintenance”;
- (b) in subclause (2) –
 - (i) by deleting the word “development of affordable housing schemes” appearing in paragraph (d) immediately after the words “facilitate the” and substituting therefor the words “design, development and maintenance of affordable housing schemes in all counties”;
 - (ii) by inserting the following new paragraph immediately after paragraph (g)—
 - (h) facilitate the provision of services to the projects under the management of the Fund.

CLAUSE 11

THAT clause 11 (4) of the Bill be amended—

- (a) in paragraph (a) by deleting the word “two” and substituting therefor the word “point five (0.5%)”;
- (b) by inserting the following new paragraph immediately after paragraph (b)—
 - (c) not less than point five per cent (0.5%) of the monies to the county committees for the administration of the County Committees as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury.
- (c) by inserting the following new subsection immediately after subsection 4 –
 - (4A) The monies under subclause (4)(c) shall be appropriated as a conditional grant to county governments.

CLAUSE 12

THAT clause 12 of the Bill be amended in sub-clause (3) by deleting the words “National Assembly” and substituting therefor the word “Parliament”.

CLAUSE 13

THAT clause 13 of the Bill be amended in sub-clause (3) by deleting the words “the National Assembly for approval before disbursing funds out of the Fund” and substituting therefor the word “Parliament”.

CLAUSE 14

THAT clause 14 of the Bill be amended in sub-clause (3)—

- (a) by deleting the word “his” appearing in paragraph (b) and substituting therefor the word “their”;
- (b) by deleting the word “his” appearing in paragraph (c) and substituting therefor the word “their”;

CLAUSE 15

THAT clause 15 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (d)—

- (da) inspect and enforce compliance to this Act, guidelines and regulations set under the Act.

CLAUSE 16

THAT clause 16 of the Bill be amended—

- (a) in sub-clause (1) –
 - (i) by deleting paragraph (b) and substituting therefor the following new paragraph—
 - (b) has ten years experience in a senior management position in the public service or private sector; and
 - (ii) by inserting the following new paragraph—
 - (c) meets the requirements of Chapter Six of the Constitution.
- (b) in sub-clause (2) by deleting the words “other than as an *ex-officio* member” appearing immediately after the word “Board”.

CLAUSE 17

THAT clause 17 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “other than the *ex-officio* members” appearing immediately after the word “Board”;
- (b) in sub-clause (2)—
 - (i) by deleting the words “other than an *ex-officio* member” appearing immediately after the word “Board” in the introductory sentence;
 - (ii) by deleting the words “his or her” appearing in paragraph (d) and substituting therefor the word “their”; and
- (c) in sub-clause (3) by deleting the words “other than an *ex-officio* member” appearing immediately after the word “Board”.

CLAUSE 18

THAT clause 18 of the Bill be amended by deleting the words “other than an *ex-officio* member” appearing immediately after the word “member”.

CLAUSE 19

THAT clause 19 of the Bill be amended in sub-clause (1) by inserting the word “First” immediately after the words “accordance with the”

CLAUSE 23

THAT clause 23 of the Bill be amended—

- (a) in sub-clause (2) by inserting the following new paragraph—
 - (c) meets the requirements of Chapter Six of the Constitution; and
- (b) by inserting the following new sub-clause—
 - (3) The Chief Executive Officer shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.

CLAUSE 32

THAT the Bill be amended by deleting clause 32 and substituting therefor the following new section –

Allocation
of land.

32. (1) The provisions of the Land Act shall, subject to subsection (2), apply to the allocation of public land for the implementation of the affordable housing scheme and the development of the institutional housing scheme.

No. 6 of
2012

(2) Land held by a county government shall not be allocated unless the Board has, in the prescribed manner carried out public participation and stakeholder engagement with the affected community within the county.

CLAUSE 33

THAT clause 33 of the Bill be amended –

- (a) in sub-clause (1) by deleting the word “Fund” appearing immediately after the word “The” and substituting therefor the word “Board”.
- (b) in sub-clause (2) by deleting the word “Fund” appearing immediately after the words “Act, 2012, the” and substituting therefor the word “Board”.

CLAUSE 34

THAT clause 34 of the Bill be amended by deleting the word “Fund” and substituting therefor the word “Board”.

CLAUSE 35

THAT the Bill be amended by deleting clause 35 and substituting therefor the following new clause —

Agreement with
private
institutions and
persons.

35. (1) The Board may enter into an agreement with a private institution –

- (a) to develop and construct affordable housing units and associated social and physical infrastructure; and
- (b) for the supply of goods and materials in connection with the construction of affordable housing units.

(2) The Board shall, before entering into an agreement under subsection (1), publish in at least two newspapers of nationwide circulation and on electronic media, a notice of intention to enter into an agreement and invitation of tenders from the public in the prescribed form.

(3) The Cabinet Secretary may, in consultation with the Board, prescribe guidelines for the publication of a notice under subsection (2) and invitations to tender.

CLAUSE 36

THAT clause 36 of the Bill be amended in sub-clause (1) by deleting the word “Fund” and substituting therefor the word “Board”.

CLAUSE 38

THAT clause 38 of the Bill be deleted and substituted with the following new clause—

Eligibility criteria. **38.** (1) A person is eligible for allocation of one affordable housing unit if the person meets the criteria prescribed in regulations.

(2) In this section, a person means a natural person

CLAUSE 39

THAT clause 39 of the Bill be amended in subclause (1) by deleting the words “section 30” and substituting therefor the words “section 38”.

CLAUSE 40

THAT clause 40 of the Bill be amended by—

- (a) renumbering the current paragraph as subclause (1); and
- (b) by inserting the following new sub-clause—

(2) The Cabinet Secretary may in consultation with the Board issue regulations for the better carrying out of subsection (1).

CLAUSE 42

THAT clause 42 of the Bill be amended by deleting sub-clause (4) and substituting therefor the following new sub-clauses—

- (4) A person who has made a voluntary saving and has not been allocated an affordable housing unit—
- (a) may withdraw their savings by issuing ninety days’ written notice to the agency for refund with any accrued interest; or

(b) may apply to the Board for approval of issuance of an affordable mortgage to develop a rural affordable housing unit;

(5) An application in sub-section (4) (b) will be accompanied by an agreement that the applicant agrees to have their saved deposits and the land upon which the unit is to be built to be used as collateral.

(6) Upon approval by the Board, the applicant shall cause a charge on the title in subsection (5) to be executed in favour of the Board.

CLAUSE 44

THAT clause 44 (2) of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) to a fine not exceeding twenty million shillings or imprisonment of a term not exceeding ten years, or both; and.

CLAUSE 45

THAT clause 45 of the Bill be amended in sub-clause (1) by deleting the words “he is” appearing in paragraph(b)(i) and substituting therefor the word “they are”.

CLAUSE 47

THAT clause 47 of the Bill be amended—

(a) in sub-clause (2) by inserting the following new paragraphs—

(i) immediately after paragraph (a)—

(ab) criteria for eligibility of allocation of an affordable housing unit under section 38 after paragraph (a);

(ii) immediately after paragraph (i);

(j) the typology and dimensions for affordable housing units relative to the incomes of the individual applicants;

(k) the procedural guidelines for the Board to off-take affordable housing units under an affordable housing scheme;

(l) the interest rate or administration fee for a loan issued under section 41; and

(m) criteria for eligibility of allocation of a low-interest mortgage under section 42.

(b) by inserting the following new sub-clauses—

(3) The Cabinet Secretary shall table before Parliament, the regulations made under this section within thirty days of commencement of this Act.

(4) Regulations made under this section shall not take effect unless approved by a resolution passed by Parliament.

(5) If a House of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after submission to it for approval, the House shall be deemed to have approved those regulations.

CLAUSE 48

THAT clause 48 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3) –

(4) Any ongoing project or programme on affordable housing implemented pursuant to a commitment or obligation under subsection (3) shall be deemed to be a project or programme commenced under this Act.

CLAUSE 49

THAT clause 49 of the Bill be amended in sub-clause (1) by inserting the word “before” after the word “immediately”.

NEW CLAUSES

THAT the Bill be amended by inserting the following new clauses immediately after clause 11—

NEW CLAUSE 11A

Investments by the Board. **11A.** The Board may, with the approval of the Cabinet Secretary in charge of the Treasury, invest any income that is not immediately required.

NEW CLAUSE 11B

Borrowing by the Board. **11B.** The Board may, with the approval of the Cabinet Secretary in charge of the Treasury, borrow funds for the advancement of the objectives of the Act.

THAT the Bill be amended by inserting the following new clauses immediately after clause 31—

NEW CLAUSE 31A

PART III (A) —ROLE OF THE COUNTY GOVERNMENTS IN AFFORDABLE HOUSING

Establishment
of County
Rural and
Urban
Affordable
Housing
Committees.

31A. (1) There is established in every county, a County Rural and Urban Affordable Housing Committee.

(2) The County Committee shall consist of the following—

(a) a non-executive chairperson who shall be nominated by the county governor;

(b) the County Executive Committee member responsible for matters relating to housing or their representative designated in writing;

(c) three other persons who shall be nominated by the county governor, of whom—

(i) one shall be a representative of a registered association of traders operating in the county;

(ii) one shall be a representative of a registered residential association; in the county;

(iii) one shall be a member of the public residing within the county; and

(d) the chief officer for the time being in charge of housing, who shall be an *ex-officio* member and the secretary to the County Committee.

(3) A person nominated under subsection (2) (a) and subsection (2) (d), shall be vetted and approved by the county assembly.

(4) In nominating a person as a member under subsection (2) (a) and subsection (2) (d), the county governor shall—

(a) ensure that not more than two-thirds of the members are of the same gender;

- (b) ensure that ethnic minorities within the county are adequately represented; and
 - (c) consider marginalized groups including youth and persons with disability.
- (5) The members of the Committee shall be appointed within thirty days of the commencement of this Act.

NEW CLAUSE 31B

Qualifications for appointment.

31B. (1) A person qualifies to be appointed as the Chairperson of the County Committee if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least five years’ experience in matters relating to housing, built environment, banking, or finance;
- (c) has resided in the county for a period of not less than five years.; and
- (d) meets the requirements of Chapter Six of the Constitution

(2) A person qualifies to be appointed as a member of the County Committee, if the person—

- (a) meets the requirements of Chapter Six of the Constitution;
- (b) has not been convicted of a criminal offence which attracts imprisonment for a term not exceeding six months;
- (c) has not been adjudged bankrupt or entered into a composition or arrangement with the creditors of the person; and
- (d) is not disqualified under any other written law from appointment as such.

NEW CLAUSE 31C

Tenure of office.

31C. (1) The Chairperson and members of the County Committee, shall hold office for a term of three years and may be eligible for re-appointment for an additional final term of three years.

(2) Notwithstanding the provisions of subsection (1), a member of the County Committee may be removed from office if that person—

- (a) has been absent from three consecutive meetings of the Committee without justifiable cause or the written permission of the Chairperson;
- (b) is adjudged bankrupt or enters into a composition or arrangement with the creditors of the person;
- (c) is convicted of an offence involving anti-economic crimes or corruption;
- (d) becomes incapable of carrying out the functions of their office due to an infirmity of mind or body;
- (e) violates Chapter Six of the Constitution; or
- (f) fails to disclose any interest in a matter under consideration by the Committee as provided for under this Act.

NEW CLAUSE 31D

Remuneration of the County Committee members. **31D.** The Chairperson and the members of the County Committee shall be paid such sitting allowances or other remuneration for expenses as recommended by the Salaries and Remuneration Commission.

NEW CLAUSE 31E

Conduct of affairs and business of the County Committee. **31E.** (1) The conduct of affairs and business of the County Committee shall be in accordance with the First Schedule of this Act.
(2) Subject to subsection (1), the Committee may amend its own procedures for the better carrying out of its functions.

NEW CLAUSE 31F

Functions of the County Committee. **31F.** (1) The County Committee shall—

- (a) in consultation with the Board, develop a framework for the attainment of affordable housing in the county;
- (b) advise the governor on affordable housing programmes within the county;
- (c) develop a five-year affordable housing investment programme for the county and annual housing investment programme for the county;
- (d) collaborate with the boards of cities and municipalities in developing plans for social and physical infrastructure related to affordable housing pursuant to section 21 of the Urban Areas and Cities Act;
- (e) make periodical written reports on the five-year affordable housing investment programme for the county and annual housing investment programme for the county to the Board;
- (f) to make annual reports to the county assembly on the implementation of affordable housing in the county; and
- (g) to perform such other duties as may be assigned by the county governor in writing.

Cap 303, Laws of Kenya.

NEW CLAUSE 31G

County legislation. **31G.** Nothing in this Act shall preclude county governments from enacting legislation related to affordable housing in the counties.

NEW CLAUSE 37A

THAT the Bill be amended by inserting the following new section immediately after clause 37 —

Priority of ownership for slum residents. **37A.** (1) The Board shall, where an affordable housing project is to be implemented on land on which exists a settlement, —

- (a) issue a notice, in the prescribed form, to the residents in that settlement of the intended implementation of the project
- (b) put in place a mechanism for the resettlement of the residents; and
- (c) offer to the residents in that settlement, the first right of purchase of a unit in the project.

NEW CLAUSES

THAT the Bill be amended by inserting the following new sections immediately after section 42 -

PART VA – OWNERSHIP OF AFFORDABLE HOUSING UNITS

Issuance of a certificate of ownership.

42A. (1) The Board shall, with the approval of the Cabinet Secretary, transfer the ownership of an affordable housing unit to a qualified applicant upon completion of payment of the agreed price.

(2) The Registrar shall not, without the written consent of the Board, register a transfer of any housing unit under this Act.

(3) The certificate of the Board that any affordable housing unit has been sold to an individual under the provisions of this Act shall be conclusive evidence of consent under subsection (2).

(4) The registration of an owner of affordable housing units shall be undertaken in accordance with the Sectional Properties Act.

Restrictions to owners of affordable housing unit.

42B. Except with the prior written consent of the Board, a purchaser of an affordable housing unit under this Act shall not by contract, agreement or otherwise, sell or agree to sell his or her unit or any interest therein to any other person.

FIRST SCHEDULE

THAT the First Schedule of the Bill be amended—

- (a) in paragraph 1 by deleting the words “at least half” appearing in subparagraph (4) and substituting therefor the word “majority”; and

(b) in paragraph 2 by deleting the words “fifty plus one” and substituting therefor the words “majority”.

THIRD SCHEDULE

THAT the Third Schedule of the Bill be amended by inserting the following new paragraphs immediately in paragraph 5—

5A. National Construction Authority.

5B. State Department responsible for matters relating to Public Works.

CLAUSE 2

THAT clause 2 of the Bill be amended—

(a) in sub – clause (1) by inserting the following new definition—

“County Committee” means the County Affordable Housing Committee established under Part IV of this Act;

(b) by deleting sub-clause (2) and inserting the following new sub-clause —

(2) For purposes of this Act, “affordable housing unit” refers to —

- (a) a social housing unit means a house targeted to a person whose monthly income is below twenty thousand shillings;
- (b) an affordable housing unit means a house targeted at a person whose monthly income is between twenty thousand and one hundred and forty-nine thousand shillings;
- (c) affordable middle class housing unit means middle to high income housing targeted at persons whose monthly income is over one hundred and forty-nine thousand shillings; or
- (d) rural affordable housing unit means a house under section 42 targeted at a person living in any area which is not an urban area.

CHAPTER FOUR

3.0 COMMITTEE OBSERVATIONS

6. Having considered the Senate Amendment on the Affordable Housing Bill 2023, the Committees made the following observations.

CLAUSE 5

THAT clause 5 of the Bill be amended in subsection (2) by deleting the words “business or company which” and substituting therefor the words “person who”.

Committees Observation

The Committee observed that the National Assembly intended to prevent double taxation for companies and businesses which pay affordable housing levies for their employees.

CLAUSE 7

THAT clause 7 of the Bill be deleted and substituted with the following new clause—

7. Where an amount of the Levy remains unpaid after the date when it becomes due and payable by a person liable to remit the amount, a penalty equal to three per centum of the unpaid amount shall be due and payable for each month or part thereof that the amount remains unpaid and shall be summarily recovered as a civil debt for the person liable to remit the amount.

Committees Observation

The Committee observed the penalty is too punitive. Additionally the Senate Amendment the methodology for recovery of unpaid levies whereas the Tax Procedures Act empowers the KRA to recover unpaid taxes and levies.

CLAUSE 9

THAT clause 9 of the Bill be amended –

- (c) in paragraph (d) by deleting the words “section 38” and substituting therefor the words “section 42”; and

Committees Observation

The Committee agreed with the proposed Senate Amendment.

- (d) by inserting the following new paragraph immediately after paragraph (e)—

- (ea) loans approved by the Cabinet Secretary for the time being in charge of the National Treasury;

Committees Observation

The Committee observed that the Senate amendment would unnecessarily increase the public debt burden yet the Fund has sufficient sources of monies including the

affordable housing levy, voluntary contributions and any monies appropriated by the National Assembly.

CLAUSE 10

THAT clause 10 of the Bill be amended –

- (c) in subclause (1) by deleting the word “development” appearing immediately after the words “funds for the” and substituting therefor the words “design, development and maintenance”;

Committee Observation

The Committee observed that since the affordable housing units will be sold to individual beneficiaries, the government should not incur more expenditure in the maintenance of the housing units, since the houses would be under Sectional Properties Act, 2020 and a management company would be responsible.

- (d) in subclause (2) –

- (iii) by deleting the word “development of affordable housing schemes” appearing in paragraph (d) immediately after the words “facilitate the” and substituting therefor the words “design, development and maintenance of affordable housing schemes in all counties”;

Committee Observation

The Committee observed that since the affordable housing units will be sold to individual beneficiaries, the government should not incur more expenditure in the maintenance of the housing units, since the houses would be under Sectional Properties Act, 2020 and a management company would be responsible

- (iv) by inserting the following new paragraph immediately after paragraph (g)—

- (h) facilitate the provision of services to the projects under the management of the Fund.

Committee Observation

The Committee agreed with the proposed Senate Amendment.

CLAUSE 11

THAT clause 11 (4) of the Bill be amended—

- (d) in paragraph (a) by deleting the word “two” and substituting therefor the word “point five (0.5%)”;

Committee Observation

The Committee observed that the Kenya Revenue Act 1995 anticipates a collection commission of up to 2%. Considering the fact KRA will be required to enforce compliance with the payment of the levy commission of 0.5% may not be sufficient

- (e) by inserting the following new paragraph immediately after paragraph (b)—

- (c) not less than point five percent (0.5%) of the monies to the county committees for the administration of the County Committees as may be

approved by the Cabinet Secretary for the time being responsible for the National Treasury.

Committee Observation

The Committee observed that County Governments have been listed among the implementing agencies for the Affordable Housing Projects, allocating funds to other entities e.g. the proposed County Committees would be double allocation of funds.

(f) by inserting the following new subsection immediately after subsection 4 –

(4A) The monies under subclause (4)(c) shall be appropriated as a conditional grant to county governments.

Committee Observation

The Committee observed that County Governments have been listed among the implementing agencies for the Affordable Housing Projects, allocating funds to other entities e.g. the proposed County Committees would be double allocation of funds.

CLAUSE 12

THAT clause 12 of the Bill be amended in sub-clause (3) by deleting the words “National Assembly” and substituting therefor the word “Parliament”.

Justification

The Committee agreed with the proposed Senate Amendment.

CLAUSE 13

THAT clause 13 of the Bill be amended in sub-clause (3) by deleting the words “the National Assembly for approval before disbursing funds out of the Fund” and substituting therefor the word “Parliament”.

Committee Observation

The Committee observed that, under Article 95(4)(b) it is the role of the National Assembly to approve budgets for a National Government and other National State Organs.

CLAUSE 14

THAT clause 14 of the Bill be amended in sub-clause (3)—

- (c) by deleting the word “his” appearing in paragraph (b) and substituting therefor the word “their”;

Committee Observation

The Committee agreed with the proposed Senate Amendment.

- (d) by deleting the word “his” appearing in paragraph (c) and substituting therefor the word “their”;

Committee Observation

The Committee agreed with the proposed Senate Amendment.

CLAUSE 15

THAT clause 15 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (d)—

- (da) inspect and enforce compliance to this Act, guidelines and regulations set under the Act.

Committee Observation

The Committee agreed with the proposed Senate Amendment.

CLAUSE 16

THAT clause 16 of the Bill be amended—

- (c) in sub-clause (1) –
 - (i) by deleting paragraph (b) and substituting therefor the following new paragraph—
 - (b) has ten years experience in a senior management position in the public service or private sector; and

Committee Observation

The Committee Agreed with the proposed Senate Amendment.

- (ii) by inserting the following new paragraph—
 - (c) meets the requirements of Chapter Six of the Constitution.

Committee Observation

The Committee agreed with the proposed Senate Amendment.

- (d) in sub-clause (2) by deleting the words “other than as an *ex-officio* member” appearing immediately after the word “Board”.

Committee Observation

The Committee observed that the Senate amendment makes the CEO a substantive member of the Board which contradicts the principles of corporate governance.

CLAUSE 17

THAT clause 17 of the Bill be amended—

- (d) in sub-clause (1) by deleting the words “other than the *ex-officio* members” appearing immediately after the word “Board”;

Committee Observation

The Committee observed that the Senate amendment makes the CEO a substantive member of the Board which contradicts the principles of corporate governance.

- (e) in sub-clause (2)–

- (i) by deleting the words “other than an *ex-officio* member” appearing immediately after the word “Board” in the introductory sentence;

Committee Observation

The Committee observed that the Senate amendment makes the CEO a substantive member of the Board which contradicts the principles of corporate governance.

- (ii) by deleting the words “his or her” appearing in paragraph (d) and substituting therefor the word “their”; and

Committee Observation

The Committee agreed with the proposed Senate Amendment.

- (f) in sub-clause (3) by deleting the words “other than an *ex-officio* member” appearing immediately after the word “Board”.

Committee Observation

The Committee observed that the Senate amendment makes the CEO a substantive member of the Board which contradicts the principles of corporate governance.

CLAUSE 18

THAT clause 18 of the Bill be amended by deleting the words “other than an *ex-officio* member” appearing immediately after the word “member”.

Committee Observation

The Committee observed that the Senate amendment makes the CEO a substantive member of the Board which contradicts the principles of corporate governance.

CLAUSE 19

THAT clause 19 of the Bill be amended in sub-clause (1) by inserting the word “First” immediately after the words “accordance with the”

Committee Observation

The Committee agreed with the proposed Senate Amendment.

CLAUSE 23

THAT clause 23 of the Bill be amended—

- (c) in sub-clause (2) by inserting the following new paragraph—
 - (c) meets the requirements of Chapter Six of the Constitution; and
- (d) by inserting the following new sub-clause—
 - (3) The Chief Executive Officer shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.

Committee Observation

The Committee agreed with the proposed Senate Amendment.

CLAUSE 32

THAT the Bill be amended by deleting clause 32 and substituting therefor the following new section –

32. (1) The provisions of the Land Act shall, subject to subsection (2), apply to the allocation of public land for the implementation of the affordable housing scheme and the development of the institutional housing scheme.

Committee Observation

The Committee agreed with the proposed Senate Amendment.

(2) Land held by a county government shall not be allocated unless the Board has, in the prescribed manner carried out public participation and stakeholder engagement with the affected community within the county.

Committee Observation

The Committee observed that land belonging to the County Government is public land which essentially should be used for the benefit of the public. Therefore it's the role of the County Government to conduct public participation.

CLAUSE 33

THAT clause 33 of the Bill be amended –

(c) in sub-clause (1) by deleting the word “Fund” appearing immediately after the word “The” and substituting therefor the word “Board”.

(d) in sub-clause (2) by deleting the word “Fund” appearing immediately after the words “Act, 2012, the” and substituting therefor the word “Board”.

Committee Observation

The Committee agreed with the proposed Senate Amendment.

CLAUSE 34

THAT clause 34 of the Bill be amended by deleting the word “Fund” and substituting therefor the word “Board”.

Committee Observation

The Committee agreed with the proposed Senate Amendment.

CLAUSE 35

THAT the Bill be amended by deleting clause 35 and substituting therefor the following new clause —

35. (1) The Board may enter into an agreement with a private institution –

(c) to develop and construct affordable housing units and associated social and physical infrastructure; and

(d) for the supply of goods and materials in connection with the construction of affordable housing units.

(2) The Board shall, before entering into an agreement under subsection (1), publish in at least two newspapers of nationwide circulation and on electronic media, a notice of intention to enter into an agreement and invitation of tenders from the public in the prescribed form.

(3) The Cabinet Secretary may, in consultation with the Board, prescribe guidelines for the publication of a notice under subsection (2) and invitations to tender.

Committee Observation

The Committee observed that the criteria for engaging the private sector entities are adequately provided in the Public Procurement and Disposal Act, 2015. Therefore there is not for the Cabinet Secretary to provide issuance of guidelines for the publication of notice and invitation of tender

CLAUSE 36

THAT clause 36 of the Bill be amended in sub-clause (1) by deleting the word “Fund” and substituting therefor the word “Board”.

Committee Observation

The Committee agreed with the proposed Senate Amendment

CLAUSE 38

THAT clause 38 of the Bill be deleted and substituted with the following new clause—

38. (1) A person is eligible for allocation of one affordable housing unit if the person meets the criteria prescribed in regulations.

(2) In this section, a person means a natural person

Committee Observation

The Committee observed that the Senate amendment will lock out the uptake of institutional housing by corporate bodies like universities and colleges.

CLAUSE 39

THAT clause 39 of the Bill be amended in subclause (1) by deleting the words “section 30” and substituting therefor the words “section 38”.

Committee Observation

The Committee agreed with the proposed Senate Amendment

CLAUSE 40

THAT clause 40 of the Bill be amended by—

(c) renumbering the current paragraph as subclause (1); and

(d) by inserting the following new sub-clause—

(2) The Cabinet Secretary may in consultation with the Board issue regulations for the better carrying out of subsection (1).

Committee Observation

The Committee agreed with the proposed Senate Amendment

CLAUSE 42

THAT clause 42 of the Bill be amended by deleting sub-clause (4) and substituting therefor the following new sub-clauses—

(4) A person who has made a voluntary saving and has not been allocated an affordable housing unit—

(c) may withdraw their savings by issuing ninety days' written notice to the agency for refund with any accrued interest; or

Committee Observation

The Committee agreed with the proposed Senate Amendment

(d) may apply to the Board for approval of issuance of an affordable mortgage to develop a rural affordable housing unit;

(5) An application in sub-section (4) (b) will be accompanied by an agreement that the applicant agrees to have their saved deposits and the land upon which the unit is to be built to be used as collateral.

(6) Upon approval by the Board, the applicant shall cause a charge on the title in subsection (5) to be executed in favour of the Board.

Committee Observation

The Committee observed, that the Senate amendment may encourage voluntary saving with the intention of accessing an affordable mortgage to develop a rural affordable housing unit instead of purchasing the other forms of affordable housing units developed through the Fund, which is the Fund's primary intention.

CLAUSE 44

THAT clause 44 (2) of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

(b) to a fine not exceeding twenty million shillings or imprisonment of a term not exceeding ten years, or both; and.

Committee Observation

The Committee agreed with the proposed Senate Amendment

CLAUSE 45

THAT clause 45 of the Bill be amended in sub-clause (1) by deleting the words “he is” appearing in paragraph(b)(i) and substituting therefor the word “they are”.

Committee Observation

The Committee agreed with the proposed Senate Amendment

CLAUSE 47

THAT clause 47 of the Bill be amended—

(c) in sub-clause (2) by inserting the following new paragraphs—

(i) immediately after paragraph (a)—

(ab) criteria for eligibility of allocation of an affordable housing unit under section 38 after paragraph (a);

Committee Observation

The Committee observed that the criteria for eligibility of allocation of an affordable housing unit has been provided for in Clause 39(2). Therefore, there this no need to develop regulations to that effect.

(ii) immediately after paragraph (i);

(j) the typology and dimensions for affordable housing units relative to the incomes of the individual applicants;

(k) the procedural guidelines for the Board to off-take affordable housing units under an affordable housing scheme;

(l) the interest rate or administration fee for a loan issued under section 41; and

(m) criteria for eligibility of allocation of a low-interest mortgage under section 42.

Committee Observation

The Committee observed that Clause 47(2) provides that the Cabinet Secretary may make regulations for provisions relating to the off-take of affordable housing units. Therefore, there this no need to develop regulations to that effect.

(d) by inserting the following new sub-clauses—

(3) The Cabinet Secretary shall table before Parliament, the regulations made under this section within thirty days of commencement of this Act.

Committee Observation

The Committee observed that 30 days may not be sufficient for the Regulation Making Authority to develop, conduct sufficient public participation, validate and subsequently table before the National Assembly.

(4) Regulations made under this section shall not take effect unless approved by a resolution passed by Parliament.

Committee Observation

The Committee observed that, Section 23(1) of the Statutory Instruments Act, 2013 provides that a Statutory Instrument shall come into operations on the date specified in the Statutory Instrument or if no date is so specified, it shall come into operation on the date of its publication in the Gazette.

(5) If a House of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after submission to it for approval, the House shall be deemed to have approved those regulations.

Committee Observation

The Committee observed that Section 15(4) of the Statutory Instruments Act, 2013 provides that for any Statutory Instrument dealing with fees, the National Assembly shall, within 28 sitting days from the date of receipt of the notice, consider the notice and make a resolution to either approve or annul the notice.

CLAUSE 48

THAT clause 48 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3) –

(4) Any ongoing project or programme on affordable housing implemented pursuant to a commitment or obligation under subsection (3) shall be deemed to be a project or programme commenced under this Act.

Committee Observation

The Committee agreed with the proposed Senate Amendment

CLAUSE 49

THAT clause 49 of the Bill be amended in sub-clause (1) by inserting the word “before” after the word “immediately”.

Committee Observation

The Committee agreed with the proposed Senate Amendment

NEW CLAUSES

THAT the Bill be amended by inserting the following new clauses immediately after clause 11—

NEW CLAUSE 11A

11A. The Board may, with the approval of the Cabinet Secretary in charge of the Treasury, invest any income that is not immediately required.

Committee Observation

The Committee observed that, the core mandate of the Board is to provide Affordable Housing Units and there will be sufficient monies to the Fund to discharge their core function for which there significant demand..

NEW CLAUSE 11B

11B. The Board may, with the approval of the Cabinet Secretary in charge of the Treasury, borrow funds for the advancement of the objectives of the Act.

Committee Observation

The Committee observed that, the Senate amendment would unnecessarily increase the public debt burden yet the Fund has sufficient sources of monies including the affordable housing levy, voluntary contributions and any monies appropriated by the National Assembly.

THAT the Bill be amended by inserting the following new clauses immediately after clause 31—

NEW CLAUSE 31A

PART III (A) —ROLE OF THE COUNTY GOVERNMENTS IN AFFORDABLE HOUSING

31A. (1) There is established in every county, a County Rural and Urban Affordable Housing Committee.

(2) The County Committee shall consist of the following—

(e) a non-executive chairperson who shall be nominated by the county governor;

(f) the County Executive Committee member responsible for matters relating to housing or their representative designated in writing;

(g) three other persons who shall be nominated by the county governor, of whom—

(iv) one shall be a representative of a registered association of traders operating in the county;

(v) one shall be a representative of a registered residential association; in the county;

(vi) one shall be a member of the public residing within the county; and

(h) the chief officer for the time being in charge of housing, who shall be an *ex-officio* member and the secretary to the County Committee.

(3) A person nominated under subsection (2) (a) and subsection (2) (d), shall be vetted and approved by the county assembly.

(4) In nominating a person as a member under subsection (2) (a) and subsection (2) (d), the county governor shall—

(d) ensure that not more than two-thirds of the members are of the same gender;

- (e) ensure that ethnic minorities within the county are adequately represented; and
- (f) consider marginalized groups including youth and persons with disability.

(5) The members of the Committee shall be appointed within thirty days of the commencement of this Act.

Committee Observation

The Committee observed that County Governments have been listed among the implementing agencies for the Affordable Housing Projects, in this regard there is no need to have County Affordable Housing Committees because, under Clause 11 (2) and Third Schedule, the Board may enter into an agreement with the County Government.

NEW CLAUSE 31B

31B. (1) A person qualifies to be appointed as the Chairperson of the County Committee if that person—

- (e) holds a degree from a university recognized in Kenya;
- (f) has at least five years' experience in matters relating to housing, built environment, banking, or finance;
- (g) has resided in the county for a period of not less than five years; and
- (h) meets the requirements of Chapter Six of the Constitution

(2) A person qualifies to be appointed as a member of the County Committee, if the person—

- (e) meets the requirements of Chapter Six of the Constitution;
- (f) has not been convicted of a criminal offence which attracts imprisonment for a term not exceeding six months;
- (g) has not been adjudged bankrupt or entered into a composition or arrangement with the creditors of the person; and
- (h) is not disqualified under any other written law from appointment as such.

Committee Observation

The Committee observed that County Governments have been listed among the implementing agencies for the Affordable Housing Projects, in this regard there is no need to have County Affordable Housing Committees because, under Clause 11 (2) and Third Schedule, the Board may enter into an agreement with the County Government.

NEW CLAUSE 31C

31C. (1) The Chairperson and members of the County Committee, shall hold office for a term of three years and may be eligible for re-appointment for an additional final term of three years.

(2) Notwithstanding the provisions of subsection (1), a member of the County Committee may be removed from office if that person—

- (a) has been absent from three consecutive meetings of the Committee without justifiable cause or the written permission of the Chairperson;
- (b) is adjudged bankrupt or enters into a composition or arrangement with the creditors of the person;
- (c) is convicted of an offence involving anti-economic crimes or corruption;
- (d) becomes incapable of carrying out the functions of their office due to an infirmity of mind or body;
- (e) violates Chapter Six of the Constitution; or
- (f) fails to disclose any interest in a matter under consideration by the Committee as provided for under this Act.

Committee Observation

The Committee observed that County Governments have been listed among the implementing agencies for the Affordable Housing Projects, in this regard there is no need to have County Affordable Housing Committees because, under Clause 11 (2) and Third Schedule, the Board may enter into an agreement with the County Government.

NEW CLAUSE 31D

31D. The Chairperson and the members of the County Committee shall be paid such sitting allowances or other remuneration for expenses as recommended by the Salaries and Remuneration Commission.

Committee Observation

The Committee observed that County Governments have been listed among the implementing agencies for the Affordable Housing Projects, in this regard there is no need to have County Affordable Housing Committees because, under Clause 11 (2) and Third Schedule, the Board may enter into an agreement with the County Government.

NEW CLAUSE 31E

31E. (1) The conduct of affairs and business of the County Committee shall be in accordance with the First Schedule of this Act.

(2) Subject to subsection (1), the Committee may amend its own procedures for the better carrying out of its functions.

Committee Observation

The Committee observed that County Governments have been listed among the implementing agencies for the Affordable Housing Projects, in this regard there is no

need to have County Affordable Housing Committees because, under Clause 11 (2) and Third Schedule, the Board may enter into an agreement with the County Government.

NEW CLAUSE 31F

31F. (1) The County Committee shall—

- (h) in consultation with the Board, develop a framework for the attainment of affordable housing in the county;
- (i) advise the governor on affordable housing programmes within the county;
- (j) develop a five-year affordable housing investment programme for the county and annual housing investment programme for the county;
- (k) collaborate with the boards of cities and municipalities in developing plans for social and physical infrastructure related to affordable housing pursuant to section 21 of the Urban Areas and Cities Act;
- (l) make periodical written reports on the five-year affordable housing investment programme for the county and annual housing investment programme for the county to the Board;
- (m) to make annual reports to the county assembly on the implementation of affordable housing in the county; and
- (n) to perform such other duties as may be assigned by the county governor in writing.

Committee Observation

The Committee observed that County Governments have been listed among the implementing agencies for the Affordable Housing Projects, in this regard there is no need to have County Affordable Housing Committees because, under Clause 11 (2) and Third Schedule, the Board may enter into an agreement with the County Government.

NEW CLAUSE 31G

31G. Nothing in this Act shall preclude county governments from enacting legislation related to affordable housing in the counties.

Committee Observation

The Committee observed that the Board will enter into agreements with County governments for the development of the Affordable Housing Unit therefore there is no need for individual County Governments to enact Affordable Housing Regulations.

NEW CLAUSE 37A

THAT the Bill be amended by inserting the following new section immediately after clause 37 —

37A. (1) The Board shall, where an affordable housing project is to be implemented on land on which exists a settlement, —

- (d) issue a notice, in the prescribed form, to the residents in that settlement of the intended implementation of the project
- (e) put in place a mechanism for the resettlement of the residents; and
- (f) offer to the residents in that settlement, the first right of purchase of a unit in the project.

Committee Observation

The Committee agreed with the proposed Senate Amendment

NEW CLAUSES

THAT the Bill be amended by inserting the following new sections immediately after section 42 –

PART VA – OWNERSHIP OF AFFORDABLE HOUSING UNITS

42A. (1) The Board shall, with the approval of the Cabinet Secretary, transfer the ownership of an affordable housing unit to a qualified applicant upon completion of payment of the agreed price.

(2) The Registrar shall not, without the written consent of the Board, register a transfer of any housing unit under this Act.

(3) The certificate of the Board that any affordable housing unit has been sold to an individual under the provisions of this Act shall be conclusive evidence of consent under subsection (2).

(4) The registration of an owner of affordable housing units shall be undertaken in accordance with the Sectional Properties Act.

Committee Observation

The Committee observed that the transfer documents will be significant in number to mandate approval by the Cabinet Secretary. Additionally, the Cabinet Secretary is a member of the Board.

The Committee also observed that Affordable Housing Units and Institutional Housing units will be registered within the respective legal framework, therefore there is no need to make specific provisions for their registration

42B. Except with the prior written consent of the Board, a purchaser of an affordable housing unit under this Act shall not by contract, agreement or otherwise, sell or agree to sell his or her unit or any interest therein to any other person.

Committee Observation

The Committee observed that the Senate amendment contravenes Article 40 of the Constitution on the Protection of Right to Property.

FIRST SCHEDULE

THAT the First Schedule of the Bill be amended—

- (c) in paragraph 1 by deleting the words “at least half” appearing in sub-paragraph (4) and substituting therefor the word “majority”; and
- (d) in paragraph 2 by deleting the words “fifty plus one” and substituting therefor the words “majority”.

Committee Observation

The Committee agreed with the proposed Senate Amendment.

THIRD SCHEDULE

THAT the Third Schedule of the Bill be amended by inserting the following new paragraphs immediately in paragraph 5—

5A. National Construction Authority.

5B. State Department responsible for matters relating to Public Works.

Committee Observation

The Committee observed that, both National Construction Authority and the State Department responsible for matters relating to Public Works are regulators rather than implementing agencies therefore listing them as implementing agencies will create a potential conflict of interest.

CLAUSE 2

THAT clause 2 of the Bill be amended—

- (a) in sub-clause (1) by inserting the following new definition—
“County Committee” means the County Affordable Housing Committee established under Part IV of this Act;

Committee Observation

The Committee observed that County Governments have been listed among the implementing agencies for the Affordable Housing Projects, in this regard there is no need to have County Affordable Housing Committees because, under Clause 11 (2) and Third Schedule, the Board may enter into an agreement with the County Government.

- (b) by deleting sub-clause (2) and inserting the following new sub-clause —

(2) For purposes of this Act, “affordable housing unit” refers to —

- (e) a social housing unit means a house targeted to a person whose monthly income is below twenty thousand shillings;
- (f) an affordable housing unit means a house targeted at a person whose monthly income is between twenty thousand and one hundred and forty-nine thousand shillings;

- (g) affordable middle class housing unit means middle to high income housing targeted at persons whose monthly income is over one hundred and forty-nine thousand shillings; or

Committee Observation

The Committee observed that there is a need to prescribe the minimum sizes of each of the categories of Affordable Housing Units to accommodate the interests of different sections of the country in which the Affordable Housing project will be implemented.

- (h) rural affordable housing unit means a house under section 42 targeted at a person living in any area which is not an urban area.

Committee Observation

The Committee observed that the Senate amendment is discriminatory to individuals residing in urban areas and would want to access affordable mortgages.

CHAPTER FOUR

4.0 COMMITTEE RECOMMENDATIONS

7. Having considered the Senate Amendment to the Affordable Housing Bill 2023, the Committees **recommends that;**
- I. The House agrees with the proposed Senate Amendments to Clauses 9, 10(b)(ii), 12, 14, 15, 16, 17(b)(ii), 19, 23, 32, 33, 34,36, 39, 40, 42(4)(a), 44, 45, 48, 49, New Clause 37A and amendments to the First Schedule
 - II. The Committee recommends that the House rejects the amendment proposed by the Senate to clause 5 since the intention of the National Assembly was to prevent double taxation for companies and businesses which pay affordable housing levies for their employees.
 - III. The Committee recommends that the House rejects the amendment proposed by the Senate to clause 7 since as currently worded the amendment does not provide a methodology to collect and enforce default payment together with its penalty. Therefore is a need to link the penalty to the Tax Procedures Act because the Kenya Revenue Authority is mandated as the collector.
 - IV. The Committee recommends that the House rejects the amendment proposed by the Senate to clause 9(b) since this would unnecessarily increase the public debt burden yet the Fund has sufficient sources of monies including the affordable housing levy, voluntary contributions and any monies appropriated by the National Assembly.
 - V. The Committee recommends that the House rejects the amendments proposed by the Senate to clauses 10(a) and 10(b)(i) since the National Assembly had deleted the element of “maintenance” on the rationale that once a project is completed, the government should not incur more expenditure in the maintenance of the housing units, since the houses would be under Sectional Properties Act, 2020 and a management company would be responsible.
 - VI. The Committee recommends that the House rejects the amendment proposed by the Senate to clause 11(4)(g) since it will not be in line with Section 16(1)(ba) of the Kenya Revenue Act, 1995 which provides that any commission received by the Authority for collecting any revenue on behalf of a government agency shall not exceed 2% of the total revenue collected.
 - VII. The Committee recommends that the House rejects the amendment proposed by the Senate to clause 11(4)(h) since the National Assembly intended that the County governments would receive their allocation of the funds in accordance with clause 11(2). Further, the proposed allocation does not provide for the

ceiling but the lowest amount which means that the amount could be anything above 0.5% of the monies.

- VIII. The Committee recommends that the House rejects the amendment proposed by the Senate to clause 13 since its approval of budgets for the National Government and other National State Organs is a preserve of the National Assembly in accordance with Article 95(4)(b) of the Constitution
- IX. The Committee recommends that the House rejects the amendment proposed by the Senate to clause 16(b) since it equates the *ex officio member* (CEO) to a substantive member of the Board. This contradicts the principles of corporate governance.
- X. The Committee recommends that the House rejects the amendments proposed by the Senate to clauses 16(b), 17(a), 17(b)(i), 17(c) and 18 since it equates the *ex officio member* (CEO) to a substantive member of the Board. This contradicts the principles of corporate governance.
- XI. The Committee recommends that the House rejects the amendment proposed by the Senate to clause 32(2) since the entity allocating land for the Affordable Housing Programme is the County Government and therefore it is the onus of the county government to conduct public participation.
- XII. The Committee recommends that the House rejects the amendment proposed by the Senate to clause 35 since Part IX of the Public Procurement and Disposal Act, 2015 provides for sufficient choices and methods of procurement and the provisions of the Act need not be replicated in the Bill
- XIII. The Committee recommends that the House rejects the amendment proposed by the Senate to clause 38 since the National Assembly amended this clause to allow for the uptake of institutional housing for example by universities. The intention was therefore not to restrict eligibility only to natural persons. The Senate amendment will negate institutional housing provisions in the Bill.
- XIV. The Committee recommends that the House rejects the amendments proposed by the Senate to clauses 42(4)(b), 42(5) and 42(6), since it may encourage voluntary saving with the intention of accessing an affordable mortgage to develop a rural affordable housing unit instead of purchasing the other forms of affordable housing units developed through the Fund. This may not be sustainable in the long run.
- XV. The Committee recommends that the House rejects the amendment proposed by the Senate to clause 47 (2)(i) since the criteria for eligibility of allocation of an affordable housing unit has been provided for in Clause 39(2).

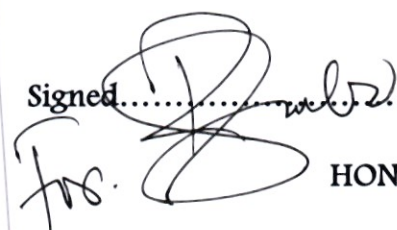
- XVI. The Committee recommends that the House rejects the amendment proposed by the Senate to clause 47 (2)(ii) since Clause 47(2) provides that the Cabinet Secretary may make regulations for provisions relating to the off-take of affordable housing units. Therefore, there is no need to develop regulations to that effect
- XVII. The Committee recommends that the House rejects the amendment proposed by the Senate, the New Clause 47 (3), since the proposed 30 days may not be sufficient for the regulation-making authority to comply with the requirements and timelines prescribed in the Statutory Instruments Act, 2013.
- XVIII. The Committee recommends that the House rejects the amendment proposed by the Senate, that is the New Clause 47 (5) since this contradicts Section 15(4) of the Statutory Instruments Act, 2013 which provides that any Statutory Instrument dealing with fees, the National Assembly shall, within 28 sitting days from the date of receipt of the notice, consider the notice and make a resolution to either approve or reject the notice.
- XIX. The Committee recommends that the House rejects the amendment proposed by the Senate that is the New clause 11A since this will encourage the Board to prefer investment of the monies of the Fund as opposed to development of affordable housing which is their core function.
- XX. The Committee recommends that the House rejects the amendment proposed by the Senate to this new clause 11B since it would unnecessarily increase the public debt burden yet the Fund has sufficient sources of monies including the affordable housing levy, voluntary contributions and any monies appropriated by the National Assembly.
- XXI. The Committee recommends that the House rejects the amendments proposed by the Senate that are the New clauses 31A, 31B, 31C, 31D, 31E and 31F since County Governments have been listed among the implementing agencies for the Affordable Housing Projects, in this regard there is no need to have County Affordable Housing Committees because, under Clause 11 (2) and Third Schedule, the Board may enter into an agreement with the County Government
- XXII. The Committee recommends that the House rejects the amendment proposed by the Senate that is the New Clause 31G, since the Board will enter into agreements with County governments for the development of the Affordable Housing Unit therefore there is no need for individual County Governments to enact Affordable Housing Regulations
- XXIII. The Committee recommends that the House rejects the amendment proposed by the Senate that is the New clause 42A, since the transfer documents will be significant in number to mandate approval by the Cabinet Secretary. Additionally, the Cabinet Secretary is a member of the Board. Further, the

Affordable Housing Units and Institutional Housing units will be registered within the respective legal framework, therefore there is no need to make specific provisions for their registration

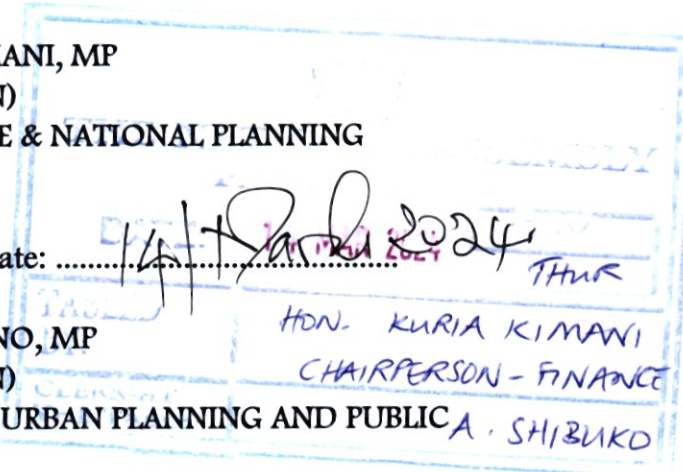
- XXIV. The Committee recommends that the House rejects the amendment proposed by the Senate that is the new clause 42B since it contravenes Article 40 of the Constitution on the protection of the right to property.
- XXV. The Committee recommends that the House rejects the amendment proposed by the Senate to the Third Schedule since the National Construction Authority is a regulator rather than an implementing agency thus their inclusion in the Schedule may create a conflict of interest. Further, the State Department responsible for matters relating to Public Works is a policy and oversight organ whose functions as per Executive Order No. 2 of 2023 include setting and management of building and construction standards and codes, and registration and regulation of contractors, consultants for buildings, civil works and material suppliers.
- XXVI. The Committee recommends that the House rejects the amendment proposed by the Senate to Clause 2 (1), since County Governments have been listed among the implementing agencies for the Affordable Housing Projects, in this regard there is no need to have County Affordable Housing Committees because, under Clause 11 (2) and Third Schedule, the Board may enter into an agreement with the County Government
- XXVII. The Committee recommends that the House rejects the amendment proposed by the Senate to Clause 2 (2) since there is a need to prescribe the minimum sizes of each of the categories of Affordable Housing Units to accommodate the interests of different sections of the country in which the Affordable Housing project will be implemented.

Signed.....  Date: 14th March 2024

HON. CPA KURIA KIMANI, MP
(CHAIRPERSON)
DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING

Signed.....  Date: 14th March 2024

HON. JOHANA NGENO, MP
(CHAIRPERSON)
DEPARTMENTAL COMMITTEE ON HOUSING, URBAN PLANNING AND PUBLIC WORKS



SCHEDULE OF THE REJECTED SENATE AMENDMENTS

CLAUSE 5

THAT clause 5 of the Bill be amended in subsection (2) by deleting the words “business or company which” and substituting therefor the words “person who”.

Committee Resolution

The Committee rejected the Senate amendment because the National Assembly intended to prevent double taxation for companies and businesses which pay affordable housing levies for their employees.

CLAUSE 7

THAT clause 7 of the Bill be deleted and substituted with the following new clause—

7. Where an amount of the Levy remains unpaid after the date when it becomes due and payable by a person liable to remit the amount, a penalty equal to three per centum of the unpaid amount shall be due and payable for each month or part thereof that the amount remains unpaid and shall be summarily recovered as a civil debt for the person liable to remit the amount.

Committee Resolution

The Committee rejected the Senate amendment because as currently worded the amendment does not provide a methodology to collect and enforce default payment together with its penalty. Therefore is a need to link the penalty to the Tax Procedures Act because the Kenya Revenue Authority is mandated as the collector.

CLAUSE 9

THAT clause 9 of the Bill be amended –

(a) by inserting the following new paragraph immediately after paragraph (e)—

(ea) loans approved by the Cabinet Secretary for the time being in charge of the National Treasury;

Committee Resolution

The Committee rejected the Senate amendment because this would unnecessarily increase the public debt burden yet the Fund has sufficient sources of monies including the affordable housing levy, voluntary contributions and any monies appropriated by the National Assembly.

CLAUSE 10

THAT clause 10 of the Bill be amended –

- (a) in subclause (1) by deleting the word “development” appearing immediately after the words “funds for the” and substituting therefor the words “design, development and maintenance”;

Committee Resolution

The Committee rejected the Senate amendment because the National Assembly had deleted the element of “maintenance” on the rationale that once a project is completed, the government should not incur more expenditure in the maintenance of the housing units, since the houses would be under Sectional Properties Act, 2020 and a management company would be responsible.

- (i) in subclause (2) –

- (i) by deleting the word “development of affordable housing schemes” appearing in paragraph (d) immediately after the words “facilitate the” and substituting therefor the words “design, development and maintenance of affordable housing schemes in all counties”;

Committee Resolution

The Committee rejected the Senate amendment because the National Assembly had deleted the element of “maintenance” on the rationale that once a project is completed, the government should not incur more expenditure in the maintenance of the housing units, since the houses would be under Sectional Properties Act, 2020 and a management company would be responsible.

CLAUSE 11

THAT clause 11 (4) of the Bill be amended—

- (a) in paragraph (a) by deleting the word “two” and substituting therefor the word “point five (0.5%)”;

Committee Resolution

The Committee rejected the Senate amendment because it will not be in line with section 16(1)(ba) of the Kenya Revenue Act, 1995 which provides that any commission received by the Authority for collecting any revenue on behalf of a government agency shall not exceed 2% of the total revenue collected.

- (b) by inserting the following new paragraph immediately after paragraph (b)—

- (c) not less than point five percent (0.5%) of the monies to the county committees for the administration of the County Committees as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury.

Committee Resolution

The Committee rejected the Senate amendment because the National Assembly intended that the County governments would receive their allocation of the funds in accordance with clause 11(2). Further, the proposed allocation does not provide for the ceiling but the lowest amount which means that the amount could be anything above 0.5% of the monies.

(c) by inserting the following new subsection immediately after subsection 4 –

(4A) The monies under subclause (4)(c) shall be appropriated as a conditional grant to county governments.

Committee Resolution

The Committee rejected the Senate amendment because the National Assembly intended that the county governments would receive their allocation of the funds in accordance with clause 11(2).

CLAUSE 13

THAT clause 13 of the Bill be amended in sub-clause (3) by deleting the words “the National Assembly for approval before disbursing funds out of the Fund” and substituting therefor the word “Parliament”.

Committee Resolution

The Committee rejected the Senate amendment because approval of budgets for the National Government and other National State Organs is a preserve of the National Assembly in accordance with Article 95(4)(b) of the Constitution.

CLAUSE 16

THAT clause 16 of the Bill be amended—

(f) in sub-clause (2) by deleting the words “other than as an *ex-officio* member” appearing immediately after the word “Board”.

Committee Resolution

The Committee rejected the Senate amendment because it equates the *ex officio member* (CEO) to a substantive member of the Board. This contradicts the principles of corporate governance.

CLAUSE 17

THAT clause 17 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “other than the *ex-officio* members” appearing immediately after the word “Board”;

Committee Resolution

The Committee rejected the Senate amendment because it equates the *ex officio* member (CEO) to a substantive member of the Board. This contradicts the principles of corporate governance.

- (b) in sub-clause (2)–

- (i) by deleting the words “other than an *ex-officio* member” appearing immediately after the word “Board” in the introductory sentence;

Committee Resolution

The Committee rejected the Senate amendment because it equates the *ex officio* member (CEO) to a substantive member of the Board. This contradicts the principles of corporate governance.

- (c) in sub-clause (3) by deleting the words “other than an *ex-officio* member” appearing immediately after the word “Board”.

Committee Resolution

The Committee rejected the Senate amendment because it equates the *ex officio* member (CEO) to a substantive member of the Board. This contradicts the principles of corporate governance.

CLAUSE 18

THAT clause 18 of the Bill be amended by deleting the words “other than an *ex-officio* member” appearing immediately after the word “member”.

Committee Resolution

The Committee rejected the Senate amendment because it equates the *ex officio* member (CEO) to a substantive member of the Board. This contradicts the principles of corporate governance.

CLAUSE 32

THAT the Bill be amended by deleting clause 32 and substituting therefor the following new section –

32. (2) Land held by a county government shall not be allocated unless the Board has, in the prescribed manner carried out public participation and stakeholder engagement with the affected community within the county.

Committee Resolution

The Committee rejected the Senate amendment because the entity allocating land for the Affordable Housing Programme is the County Government and therefore it is the onus of the county government to conduct public participation.

CLAUSE 35

THAT the Bill be amended by deleting clause 35 and substituting therefor the following new clause —

35. (1) The Board may enter into an agreement with a private institution –

- (a) to develop and construct affordable housing units and associated social and physical infrastructure; and
- (b) for the supply of goods and materials in connection with the construction of affordable housing units.

(2) The Board shall, before entering into an agreement under subsection (1), publish in at least two newspapers of nationwide circulation and on electronic media, a notice of intention to enter into an agreement and invitation of tenders from the public in the prescribed form.

(3) The Cabinet Secretary may, in consultation with the Board, prescribe guidelines for the publication of a notice under subsection (2) and invitations to tender.

Committee Resolution

The Committee rejected the Senate amendment because Part IX of the Public Procurement and Disposal Act, 2015 provides for sufficient choices and methods of procurement and the provisions of the Act need not be replicated in the Bill

CLAUSE 38

THAT clause 38 of the Bill be deleted and substituted with the following new clause—

38. (1) A person is eligible for allocation of one affordable housing unit if the person meets the criteria prescribed in regulations.

(2) In this section, a person means a natural person

Committee Resolution

The Committee rejected the Senate amendment because the National Assembly amended this clause to allow for the uptake of institutional housing for example by universities. The intention was therefore not to restrict eligibility only to natural persons. The Senate amendment will negate institutional housing provisions in the Bill.

CLAUSE 42

THAT clause 42 of the Bill be amended by deleting sub-clause (4) and substituting therefor the following new sub-clauses—

(4) A person who has made a voluntary saving and has not been allocated an affordable housing unit—

(f) may apply to the Board for approval of issuance of an affordable mortgage to develop a rural affordable housing unit;

(5) An application in sub-section (4) (b) will be accompanied by an agreement that the applicant agrees to have their saved deposits and the land upon which the unit is to be built to be used as collateral.

(6) Upon approval by the Board, the applicant shall cause a charge on the title in subsection (5) to be executed in favour of the Board.

Committee Resolution

The Committee rejected the Senate amendment because it may encourage voluntary saving with the intention of accessing an affordable mortgage to develop a rural affordable housing unit instead of purchasing the other forms of affordable housing units developed through the Fund. This may not be sustainable in the long run.

CLAUSE 47

THAT clause 47 of the Bill be amended—

(a) in sub-clause (2) by inserting the following new paragraphs—

(i) immediately after paragraph (a)—

(ab) criteria for eligibility of allocation of an affordable housing unit under section 38 after paragraph (a);

Committee Resolution

The Committee rejected the Senate amendment because the criteria for eligibility of allocation of an affordable housing unit has been provided for in Clause 39(2).

(ii) immediately after paragraph (i);

- (j) the typology and dimensions for affordable housing units relative to the incomes of the individual applicants;
- (k) the procedural guidelines for the Board to off-take affordable housing units under an affordable housing scheme;
- (l) the interest rate or administration fee for a loan issued under section 41; and
- (m) criteria for eligibility of allocation of a low-interest mortgage under section 42.

Committee Resolution

The Committee rejected the Senate amendment because Clause 47(2) provides that the Cabinet Secretary may make regulations for provisions relating to the off-take of affordable housing units. Therefore, there is no need to develop regulations to that effect

(b) by inserting the following new sub-clauses—

(3) The Cabinet Secretary shall table before Parliament, the regulations made under this section within thirty days of commencement of this Act.

Committee Resolution

The Committee rejected the Senate amendment because the proposed 30 days may not be sufficient for the regulation-making authority to comply with the requirements and timelines prescribed in the Statutory Instruments Act, 2013.

(5) If a House of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after submission to it for approval, the House shall be deemed to have approved those regulations.

Committee Resolution

The Committee Rejected the Proposed Senate amendment because this contradicts Section 15(4) of the Statutory Instruments Act, 2013 which provides that for any Statutory Instrument dealing with fees, the National Assembly shall, within 28 sitting days from the date of receipt of the notice, consider the notice and make a resolution to either approve or reject the notice.

NEW CLAUSES

THAT the Bill be amended by inserting the following new clauses immediately after clause 11—

NEW CLAUSE 11A

11A. The Board may, with the approval of the Cabinet Secretary in charge of Treasury, invest any income that is not immediately required.

Committee Resolution

The Committee rejected the Senate amendment because this will encourage the Board to prefer investment of the monies of the Fund as opposed to development of affordable housing which is their core function.

NEW CLAUSE 11B

11B. The Board may, with the approval of the Cabinet Secretary in charge of Treasury, borrow funds for the advancement of the objectives of the Act.

Committee Resolution

The Committee rejected the Senate amendment because this would unnecessarily increase the public debt burden yet the Fund has sufficient sources of monies including the affordable housing levy, voluntary contributions and any monies appropriated by the National Assembly.

THAT the Bill be amended by inserting the following new clauses immediately after clause 31—

NEW CLAUSE 31A

PART III (A) —ROLE OF THE COUNTY GOVERNMENTS IN AFFORDABLE HOUSING

31A. (1) There is established in every county, a County Rural and Urban Affordable Housing Committee.

(2) The County Committee shall consist of the following—

- (a) a non-executive chairperson who shall be nominated by the county governor;
- (b) the County Executive Committee member responsible for matters relating to housing or their representative designated in writing;
- (c) three other persons who shall be nominated by the county governor, of whom—
 - (i) one shall be a representative of a registered association of traders operating in the county;
 - (ii) one shall be a representative of a registered residential association; in the county;
 - (iii) one shall be a member of the public residing within the county; and
- (d) the chief officer for the time being in charge of housing, who shall be an *ex-officio* member and the secretary to the County Committee.

(3) A person nominated under subsection (2) (a) and subsection (2) (d), shall be vetted and approved by the county assembly.

(4) In nominating a person as a member under subsection (2) (a) and subsection (2) (d), the county governor shall—

- (a) ensure that not more than two-thirds of the members are of the same gender;
- (b) ensure that ethnic minorities within the county are adequately represented; and
- (c) consider marginalized groups including youth and persons with disability.

(5) The members of the Committee shall be appointed within thirty days of the commencement of this Act.

Committee Resolution

The Committee rejected the Senate amendment because County Governments have been listed among the implementing agencies for the Affordable Housing Projects, in this regard there is no need to have County Affordable Housing Committees because, under Clause 11 (2) and Third Schedule, the Board may enter into an agreement with the County Government

NEW CLAUSE 31B

31B. (1) A person qualifies to be appointed as the Chairperson of the County Committee if that person—

- (a) holds a degree from a university recognized in Kenya;
 - (b) has at least five years' experience in matters relating to housing, built environment, banking, or finance;
 - (c) has resided in the county for a period of not less than five years.;
- and
- (d) meets the requirements of Chapter Six of the Constitution

(2) A person qualifies to be appointed as a member of the County Committee, if the person—

- (a) meets the requirements of Chapter Six of the Constitution;
- (b) has not been convicted of a criminal offence which attracts imprisonment for a term not exceeding six months;
- (c) has not been adjudged bankrupt or entered into a composition or arrangement with the creditors of the person; and
- (d) is not disqualified under any other written law from appointment as such.

Committee Resolution

The Committee rejected the Senate amendment because County Governments have been listed among the implementing agencies for the Affordable Housing Projects, in this regard there is no need to have County Affordable Housing Committees because, under Clause 11 (2) and Third Schedule, the Board may enter into an agreement with the County Government

NEW CLAUSE 31C

31C. (1) The Chairperson and members of the County Committee, shall hold office for a term of three years and may be eligible for re-appointment for an additional final term of three years.

(2) Notwithstanding the provisions of subsection (1), a member of the County Committee may be removed from office if that person—

- (a) has been absent from three consecutive meetings of the Committee without justifiable cause or the written permission of the Chairperson;
- (b) is adjudged bankrupt or enters into a composition or arrangement with the creditors of the person;
- (c) is convicted of an offence involving anti-economic crimes or corruption;
- (d) becomes incapable of carrying out the functions of their office due to an infirmity of mind or body;
- (e) violates Chapter Six of the Constitution; or
- (f) fails to disclose any interest in a matter under consideration by the Committee as provided for under this Act.

Committee Resolution

The Committee rejected the Senate amendment because County Governments have been listed among the implementing agencies for the Affordable Housing Projects, in this regard there is no need to have County Affordable Housing Committees because, under Clause 11 (2) and Third Schedule, the Board may enter into an agreement with the County Government

NEW CLAUSE 31D

31D. The Chairperson and the members of the County Committee shall be paid such sitting allowances or other remuneration for expenses as recommended by the Salaries and Remuneration Commission.

Committee Resolution

The Committee rejected the Senate amendment because County Governments have been listed among the implementing agencies for the Affordable Housing Projects, in this regard there is no need to have County Affordable Housing Committees because, under Clause 11 (2) and Third Schedule, the Board may enter into an agreement with the County Government

NEW CLAUSE 31E

31E. (1) The conduct of affairs and business of the County Committee shall be in accordance with the First Schedule of this Act.

(2) Subject to subsection (1), the Committee may amend its own procedures for the better carrying out of its functions.

Committee Resolution

The Committee rejected the Senate amendment because County Governments have been listed among the implementing agencies for the Affordable Housing Projects, in this regard there is no need to have County Affordable Housing Committees because, under Clause 11 (2) and Third Schedule, the Board may enter into an agreement with the County Government

NEW CLAUSE 31F

31F. (1) The County Committee shall—

- (a) in consultation with the Board, develop a framework for the attainment of affordable housing in the county;
- (b) advise the governor on affordable housing programmes within the county;
- (c) develop a five-year affordable housing investment programme for the county and annual housing investment programme for the county;
- (d) collaborate with the boards of cities and municipalities in developing plans for social and physical infrastructure related to affordable housing pursuant to section 21 of the Urban Areas and Cities Act;
- (e) make periodical written reports on the five-year affordable housing investment programme for the county and annual housing investment programme for the county to the Board;
- (f) to make annual reports to the county assembly on the implementation of affordable housing in the county; and
- (g) to perform such other duties as may be assigned by the county governor in writing.

Committee Resolution

The Committee rejected the Senate amendment because County Governments have been listed among the implementing agencies for the Affordable Housing Projects, in this regard there is no need to have County Affordable Housing Committees because, under Clause 11 (2) and Third Schedule, the Board may enter into an agreement with the County Government

NEW CLAUSE 31G

31G. Nothing in this Act shall preclude county governments from enacting legislation related to affordable housing in the counties.

Committee Resolution

The Committee rejected the Senate amendment because the Board will enter into agreements with County governments for the development of the Affordable Housing Unit therefore there is no need for individual County Governments to enact Affordable Housing Regulations

NEW CLAUSES

THAT the Bill be amended by inserting the following new sections immediately after section 42 -

PART VA – OWNERSHIP OF AFFORDABLE HOUSING UNITS

42A. (1) The Board shall, with the approval of the Cabinet Secretary, transfer the ownership of an affordable housing unit to a qualified applicant upon completion of payment of the agreed price.

(2) The Registrar shall not, without the written consent of the Board, register a transfer of any housing unit under this Act.

(3) The certificate of the Board that any affordable housing unit has been sold to an individual under the provisions of this Act shall be conclusive evidence of consent under subsection (2).

(4) The registration of an owner of affordable housing units shall be undertaken in accordance with the Sectional Properties Act.

Committee Resolution

The Committee rejected the Senate amendment because the transfer documents will be significant in number to mandate approval by the Cabinet Secretary. Additionally, the Cabinet Secretary is a member of the Board. Further, the Affordable Housing Units and Institutional Housing units will be registered within the respective legal framework, therefore there is no need to make specific provisions for their registration

42B. Except with the prior written consent of the Board, a purchaser of an affordable housing unit under this Act shall not by contract, agreement or otherwise, sell or agree to sell his or her unit or any interest therein to any other person.

Committee Resolution

The Committee rejected the Senate amendment because it contravenes Article 40 of the Constitution on the protection of the right to property.

THIRD SCHEDULE

THAT the Third Schedule of the Bill be amended by inserting the following new paragraphs immediately in paragraph 5—

5A. National Construction Authority.

5B. State Department responsible for matters relating to Public Works.

Committee Resolution

The Committee rejected the Senate amendment because the National Construction Authority is a regulator rather than an implementing agency thus their inclusion in the Schedule may create a conflict of interest. Further, the State Department responsible for matters relating to Public Works is a policy and oversight organ whose functions as per Executive Order No. 2 of 2023 include setting and management of building and construction standards and codes, and registration and regulation of contractors, consultants for buildings, civil works and material suppliers.

CLAUSE 2

THAT clause 2 of the Bill be amended—

- (a) in sub – clause (1) by inserting the following new definition—
“County Committee” means the County Affordable Housing Committee established under Part IV of this Act;

Committee Resolution

The Committee rejected the Senate amendment because County Governments have been listed among the implementing agencies for the Affordable Housing Projects, in this regard there is no need to have County Affordable Housing Committees because, under Clause 11 (2) and Third Schedule, the Board may enter into an agreement with the County Government

- (b) by deleting sub-clause (2) and inserting the following new sub-clause —

(2) For purposes of this Act, “affordable housing unit” refers to —

- (a) a social housing unit means a house targeted to a person whose monthly income is below twenty thousand shillings;

- (b) an affordable housing unit means a house targeted at a person whose monthly income is between twenty thousand and one hundred and forty-nine thousand shillings;
- (c) affordable middle class housing unit means middle to high income housing targeted at persons whose monthly income is over one hundred and forty-nine thousand shillings; or

Committee Resolution

The Committee rejected the Senate amendment because there is a need to prescribe the minimum sizes of each of the categories of Affordable Housing Units to accommodate the interests of different sections of the country in which the Affordable Housing project will be implemented.

- (d) rural affordable housing unit means a house under section 42 targeted at a person living in any area which is not an urban area.

Committee Resolution

The Committee rejected the Senate amendment because it is discriminatory to individuals who reside in urban areas and would want to access affordable mortgages.

THE NATIONAL ASSEMBLY	
DATE: 14 MAR 2024	
TABLED BY:	
CLEANS UP THE TABLE	

MINUTES OF THE JOINT SITTING OF THE DEPARTMENTAL COMMITTEES ON HOUSING, URBAN PLANNING AND PUBLIC WORKS AND THAT OF FINANCE AND NATIONAL PLANNING, HELD ON WEDNESDAY 13TH MARCH 2023 AT 4:00PM IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS.

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

PRESENT

- | | | |
|---|---|------------------|
| 1) Hon. CPA. Kuria Kimani, MP | - | Chairperson |
| 2) Hon. Amb. Benjamin Kipkirui Langat, MP | - | Vice-Chairperson |
| 3) Hon. Dr. Adan Keynan Wehliye, MP | | |
| 4) Hon. Andrew Adipo Okuome, MP | | |
| 5) Hon. CPA. Joseph Maero Oyula, MP | | |
| 6) Hon. David Mwalika Mboni, MP | | |
| 7) Hon. Joseph Makilap Kipkoros, MP | | |
| 8) Hon. Joseph Kamau Munyoro, MP | | |
| 9) Hon. CPA. Julius K. Rutto, MP | | |

APOLOGIES

- 1) Hon. George Sunkuyia Risa ,MP
- 2) Hon. Mohamed Soud Machele, MP
- 3) Hon. Umul Ker Sheikh Kassim, MP
- 4) Hon. Dr. Shadrack Mwiti Ithinji, MP
- 5) Hon. Dr. John Ariko Namoit, MP
- 6) Hon. Paul Kibichiy Biego, MP

THE DEPARTMENTAL COMMITTEE ON THE HOUSING, URBAN PLANNING, AND PUBLIC WORKS

PRESENT

- | | | |
|--|---|--------------------|
| 1) Hon. Johana Ng'eno Kipyegon, EGH, MP | - | Chairperson |
| 2) Hon. Mugambi Murwithania Rindikiri, OGW, MP | - | Vice – Chairperson |
| 3) Hon. John Waluke, MP | | |
| 4) Hon. Innocent Obiri Momanyi, M.P | | |
| 5) Hon. John G. Mwaniki Mukunji, MP | | |
| 6) Hon. Daniel Ogwoka Manduku, MP | | |
| 7) Hon. Ronald Kamwiko Karauri, MP | | |
| 8) Hon. Caleb Mutiso Mule , MP | | |

APOLOGIES

- 1) Hon. Esther Muthoni Passaris, OGW, MP
- 2) Hon. Joshua Kivindu Kimilu, MP
- 3) Hon. Samuel Kinuthia Gachobe, MP
- 4) Hon. Abraham Kipsang Kirwa, MP
- 5) Hon. Irene Njoki Mrembo, MP
- 6) Hon. Jane Wangechi Kagiri, MP
- 7) Hon. Maurice Kakai Bisau, MP

IN ATTENDANCE:

1) Mr. Benjamin Magut	-	Senior Clerk Assistant
2) Dr. Benjamin Ngimor	-	Senior Fiscal Analyst
3) Ms. Halima Hussein	-	Clerk Assistant I
4) Mr. Salem Lorot	-	Legal Counsel I
5) Mr. James Macharia	-	Media Relations Officer I
6) Ms. Peninah Nasiae	-	Legal Counsel II
7) Mr. Mabuti Mutua	-	Legal Counsel II
8) Mr. James Muguna	-	Research Officer II
9) Mr. Nelson Odida	-	Research Officer III
10) Ms. Rose Natecho	-	Clerk Assistant III
11) Ms. Winfred Kilonzo	-	Clerk Assistant III
12) Mr. Mwangi Muchiri	-	Audio Officer

JOINT COMMITTEE SECRETARIAT**AGENDA**

- 1) Prayers/Preliminaries
- 2) Confirmation of Minutes
- 3) Matters Arising
- 4) **Legal briefings on the Senate amendments to the Affordable Housing Bill, 2023**
- 5) Any Other Business
- 6) Adjournment

MIN NO NA/DC-JOINT/2024/001: PRELIMINARIES

The joint meeting was called to order at 4:00pm with a word of Prayer from Hon. Mukunji Gitonga and the agenda was adopted as filed having been proposed and seconded by Hon. Ronald Kamwiko Karauri and Hon. David Mwalika Mboni respectively.

MIN NO NA/DC-JOINT/2024/002: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS.

The agenda was deferred.

MIN NO NA/DC-JOINT/2024/003: CONSIDERATION OF THE SENATE AMENDMENTS TO THE AFFORDABLE HOUSING BILL, 2023

The Committee was taken through the Senate amendments to the Affordable Housing Bill, 2023 as follows;

- 1) **Clause 5:** The Senate amended the Clause to include the legal term person. The Joint Committee noted that the National Assembly amendment was intended to prevent double taxation for companies and businesses that pay affordable housing levy for their employees and resolved reject the Senate amendment.
- 2) **Clause 7:** The Senate amended the Clause to delete the amendment made by the National Assembly to link the enforcement of the provisions of the Bill with the Tax Procedures Act. The Joint Committee noted that the amendment linking the Act to the Tax Procedures Act was required and resolved to reject the Senate amendment

- 3) **Clause 9:** The Senate amended the Clause to correct an error in cross-referencing and included a new provision relating to the sources of funds of the Fund to provide for loans as approved by the Cabinet Secretary.
The Committee resolved to reject the amendment
- 4) **Clause 10:** The Senate amended the Clause to restore provisions relating to the design development and maintenance of affordable housing schemes.
The Joint Committee rejected the aspect of Maintenance and proposed that the Estate Management Act be amended to include service fees paid by the owners.
- 5) **Clause 11:** The Senate amended the Clause to reduce the fee payable to KRA for collection services from 2% to 0.5%.
The Joint Committee rejected the amendment as it was an irregularity to not have a specific percentage and a ceiling to the funds to be allocated.
- 6) **Clause 12:** The Senate amended the Clause to ensure that the five-year investment affordable housing programme was submitted to both Houses as opposed to the National Assembly.
The Joint Committee agreed to the amendment as it would ensure effective oversight
- 7) **Clause 13:** The Senate amended the Clause to ensure that the annual investment program is submitted to both Houses as opposed to the National Assembly.
The Joint Committee noted that matters regarding budget implementation monitoring was the mandate of the National Assembly and rejected the amendment.
- 8) **Clause 14:** The Senate amended the Clause to correct grammar by introducing gender-neutral language.
The Joint Committee agreed to the amendment.
- 9) **Clause 15:** The Senate amended the Clause to empower the Board to inspect developments funded by the Fund and to enforce compliance with the Act.
The Joint Committee agreed to the amendment.
- 10) **Clause 16:** The Senate amended the Clause to provide for ten years of experience for the Chairperson.
The Joint Committee agreed to the amendment.
- 11) **Clause 17:** The Senate amended the Clause to remove the exclusion of the ex officio member about the tenure of office.
The Joint Committee resolved to reject the amendment as it equates the ex officio member (CEO) to a substantive member of the Board which contradicts the principles of corporate governance.
- 12) **Clause 18:** The Senate amended the Clause to remove the exclusion of the ex officio member about the tenure of office relating to filling of a vacancy that arises in the Board.

The Joint Committee resolved to reject the amendment as it equates the ex officio member (CEO) to a substantive member of the Board which contradicts the principles of corporate governance.

- 13) **Clause 19:** The Senate amended the Clause to clean up and clarify which of the three schedules the section refers to.
The Joint Committee agreed to the amendment.
- 14) **Clause 23:** The Senate amended the Clause to align the Bill to the Leadership and Integrity provisions under the Constitution and introduce the tenure of office of the CEO in line with Mwongozo Code of Governance.
The Joint Committee agreed to the amendment.
- 15) **Clause 32:** The Senate amended the Clause to provide that the Land Act shall apply to the allocation of public land for the implementation of the affordable housing scheme and to provide that the county government shall not allocate land to the Board before conducting public participation.
The Joint Committee agreed to the amendment.
- 16) **Clause 33:** The Senate amended the Clause to clarify that the Board was empowered to enter into contracts on behalf of the Fund.
The Joint Committee agreed to the amendment.
- 17) **Clause 34:** The Senate amended the Clause to clarify that the Board was empowered to enter into contracts on behalf of the Fund.
The Joint Committee agreed to the amendment.
- 18) **Clause 35:** The Senate amended the Clause to provide that the Board may enter into a contract with the private sector.
The Joint Committee rejected the amendment
- 19) **Clause 36:** The Senate amended the Clause to clarify that the Board was empowered to enter contracts on behalf of the Fund.
The Joint Committee agreed to the amendment.
- 20) **Clause 38:** The Senate amended the Clause to clarify that a person refers to a natural person who can only access one unit to ensure that Kenyans can have access to affordable housing units.
The Joint Committee rejected the amendment
- 21) **Clause 39:** The Senate amended the Clause to correct cross-referencing errors.
The Joint Committee agreed to the amendment.
- 22) **Clause 40:** The Senate amended the Clause to clean up the numbering.
The Joint Committee agreed to the amendment.

- 23) **Clause 42:** The Senate amended the Clause to provide for the use of voluntary savings and land title deeds in rural areas as collateral provision of an affordable mortgage to facilitate rural affordable housing units by a voluntary contributor denied an affordable housing unit.
The Joint Committee rejected the amendment
- 24) **Clause 44:** The Senate amended the Clause to increase the penalty for misappropriation of monies of the Fund from Kenya shillings 10 million to 20 million and a term not exceeding 10 years.
The Joint Committee agreed to the amendment.
- 25) **Clause 45:** The Senate amended the Clause to introduce gender neutral language.
The Joint Committee agreed to the amendment.
- 26) **Clause 47:** The Senate amended the Clause to empower the Cabinet Secretary to develop regulations that will ensure better carrying into effects of the provisions of the Act and to set timelines for tabling of the regulations and their approval by Parliament.
The Joint Committee rejected the amendment
- 27) **Clause 48:** The Senate amended the Clause to save the ongoing affordable housing projects.
The Joint Committee agreed to the amendment.
- 28) **Clause 49:** The Senate amended the Clause to provide for clarity.
The Joint Committee agreed to the amendment
- 29) **New Clause 11A:** rejected
- 30) **New Clause 11B:** rejected
- 31) **New Part III(A):** Introduces the role of County Governments in affordable housing. It introduces County Rural and Urban Affordable Housing Committees.
The Joint Committee resolved to reject the whole New Part III
- 32) **New Clause 42A:** The Clause provides for issuance of a certificate of ownership by requiring the Board with the approval of the Cabinet Secretary, to transfer the ownership of an affordable housing unit to a qualified applicant upon completion of payment of the agreed price.
The Joint Committee rejected the new Clause
- 33) **New Clause 42B:** To provide that a person shall not acquire more than one affordable housing unit developed under the Act.
The Joint Committee rejected the new Clause
- 34) **First Schedule:** The Senate amended the First Schedule to clarify the number of members who can convene an extraordinary meeting.
The Joint Committee agreed to the amendment.

35) **Third Schedule:** The Senate amended the Third Schedule to include the National Construction Authority as an implementing agency.
The Joint Committee rejected the amendment

36) **Clause 2:** The Senate amended the Clause to define the term 'county committee' and include rural affordable housing units as part of an affordable housing unit.
The Joint Committee rejected the amendment

MIN No. NA/DC-JOINT/2024/004: ADJOURNMENT

There being no any other business, the Chairperson adjourned the meeting at 7.22 p.m.
The next meeting will be held on notice

Sign.....


**HON. CPA. KURIA KIMANI, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING**

Date.....

Sign..... 14th March 2024

**HON. KIPYEGON, JOHANA NGENO, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HOUSING, URBAN PLANNING &
PUBLIC WORKS**

Date..... 14th March 2024

For Chairman




REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT – THIRD SESSION – 2024
DEPARTMENTAL COMMITTEE ON HOUSING, URBAN PLANNING AND
PUBLIC WORKS.
ADOPTION LIST

**REPORT ON THE PROPOSED SENATE AMENDMENTS TO THE AFFORDABLE
HOUSING BILL (NATIONAL ASSEMBLY BILL NO. 75 OF 2023)**

We, the Members of the Departmental Committee on Housing, Urban Planning and Public Works, have pursuant to Standing Order 199, adopted this Report, and affix our signatures to affirm our approval and confirm its accuracy, validity, and authenticity today,
Wednesday 13th March 2024.

S/NO.	NAMES	SIGNATURE
1.	HON. JOHANA NG'ENO KIPYEGON, EGH, M.P. CHAIRPERSON	
2.	HON. MUGAMBI MURWITHANIA RINDIKIRI, M.P. – VICE-CHAIRPERSON	
3.	HON. JOHN WALUKE KOYI, M.P.	
4.	HON. ESTHER MUTHONI PASSARIS, OGW, M.P.	
5.	HON. INNOCENT OBIRI MOMANYI, M.P.	
6.	HON. JOSHUA KIVINDA KIMILU, M.P.	
7.	HON. SAMUEL KINUTHIA GACHOBE, M.P.	
8.	HON. ABRAHAM KIPSANG KIRWA, M.P.	
9.	HON. CALEB MUTISO MULE, M.P.	
10.	HON. DANIEL OGWOKA MANDUKU, M.P.	
11.	HON. IRENE NJOKI MREMBO, M.P.	
12.	HON. JANE WANGECHI KAGIRI, OGW, M.P.	
13.	HON. JOHN G. MWANIKI MUKUNJI, M.P.	
14.	HON. MAURICE KAKAI BISAU, M.P.	
15.	HON. RONALD KAMWIKO KARAUARI, M.P.	



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.

ADOPTION LIST

REPORT ON THE PROPOSED SENATE AMENDMENTS TO THE AFFORDABLE
HOUSING BILL (NATIONAL ASSEMBLY BILL NO. 75 OF 2023)

We, the Members of the Departmental Committee on Finance and National Planning have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, **Wednesday 13th March, 2024.**

S/NO.	NAME	SIGNATURE
1.	HON. (CPA). KURIA KIMANI, MP - CHAIRPERSON	
2.	HON. (AMB). BENJAMIN KIPKIRUI LANGAT, MP - VICE CHAIRPERSON	
3.	HON. DR. ADAN KEYNAN WEHLIYE, MP	
4.	HON. GEORGE SUNKUYIA RISA, MP	
5.	HON. (CPA) JOSEPH MAERO OYULA, MP	
6.	HON. ANDREW ADIPO OKUOME, MP	
7.	HON. DAVID MWALIKA MBONI, MP	
8.	HON. JOSEPH MAKILAP KIPKOROS, MP	
9.	HON. JOSEPH KAMAU MUNYORO, MP	
10.	HON. (CPA) JULIUS KIPLETING RUTTO, MP	
11.	HON. PAUL KIBICHIY BIEGO, MP	
12.	HON. UMUL KER SHEIKH KASSIM, MP	
13.	HON. DR. SHADRACK MWITI ITHINJI, MP	
14.	HON. DR. JOHN ARIKO NAMOIT, MP	
15.	HON. MOHAMED SOUD MACHELE, MP	



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT - (THIRD SESSION)

THE NATIONAL ASSEMBLY

MESSAGES

MESSAGE FROM THE SENATE

(No. 005 of 2024)

ON PASSAGE OF THE AFFORDABLE HOUSING BILL (NATIONAL ASSEMBLY BILLS NO. 75 OF 2023)

Honourable Members,

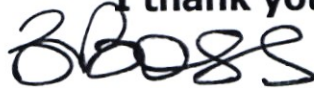
1. Pursuant to Standing Order 41(1) of the National Assembly Standing Orders, I wish to report to the House that I have received a Message from the Senate regarding the passage of the Affordable Housing Bill (National Assembly Bill No. 75 of 2023).
2. The Message conveys that, on Tuesday, 12th March 2024, the Senate considered and **passed** the Bill **with amendments**.
3. **Honourable Members**, you will recall that on Wednesday, 21st February 2024, the National Assembly considered and passed the Bill **with amendments**, following which the Speaker referred the Bill to Senate for consideration pursuant to the provisions of Article 110(4) of the Constitution.
4. In this regard, the Message and the Schedule of amendments is hereby referred to the Departmental Committee on Finance & National Planning and the Departmental Committee on Housing, Urban Planning and Public Works to jointly consider and report to the House. I further direct the Clerk

to circulate these amendments to all Members in accordance with Standing Order 145.

Honourable Members,

5. Noting the urgent nature of the Bill, I urge the two Committees to expeditiously consider the amendments to the Bill and submit a report to guide and enable the House conclude the next steps. Additionally, the Committees are encouraged to liaise with the sponsor of the Bill in processing the Senate amendments.
6. The House is accordingly guided.

I thank you!



THE HON. GLADY J. BOSS, MGH, MP
DEPUTY SPEAKER OF THE NATIONAL ASSEMBLY

Wednesday, 13th March 2024

REPUBLIC OF KENYA

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Fax: 2243694
E-mail: clerk.senate@parliament.go.ke



The Clerk's
The Senate
Parliament

P. O. Box 41842 -00100
Nairobi, Kenya

PARLIAMENT OF KENYA
OFFICE OF THE CLERK OF THE SENATE

SENATE AMENDMENTS TO THE AFFORDABLE HOUSING BILL (NATIONAL ASSEMBLY BILLS NO. 75 OF 2023)

The following amendments to the Affordable Housing Bill (National Assembly Bills No. 75 of 2023) was passed by the Senate on Tuesday, 12th March, 2024 –

CLAUSE 5

THAT clause 5 of the Bill be amended in subsection (2) by deleting the words “business or company which” and substituting therefor the words “person who”.

CLAUSE 7

THAT clause 7 of the Bill be deleted and substituted with the following new clause–

Default on
payment of
amount of
Levy.

7. Where an amount of the Levy remains unpaid after the date when it becomes due and payable by a person liable to remit the amount, a penalty equal to three per centum of the unpaid amount shall be due and payable for each month or part thereof that the amount remains unpaid and shall be summarily recovered as a civil debt for the person liable to remit the amount.

CLAUSE 9

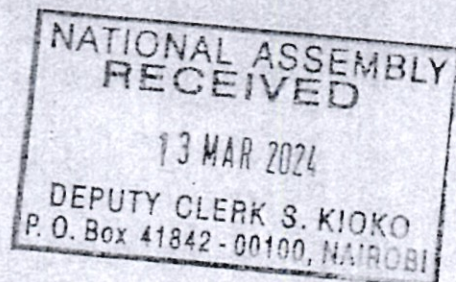
THAT clause 9 of the Bill be amended –

- (a) in paragraph (d) by deleting the words “section 38” and substituting therefor the words “section 42”; and
- (b) by inserting the following new paragraph immediately after paragraph (e)—
 - (ea) loans approved by the Cabinet Secretary for the time being in charge of the National Treasury;

CLAUSE 10

THAT clause 10 of the Bill be amended –

Signature: _____



Senate Amendments to the Affordable Housing Bill (National Assembly Bills No. 75 of 2023)

- (a) in subclause (1) by deleting the word “development” appearing immediately after the words “funds for the” and substituting therefor the words “design, development and maintenance”;
- (b) in subclause (2) –
 - (i) by deleting the word “development of affordable housing schemes” appearing in paragraph (d) immediately after the words “facilitate the” and substituting therefor the words “design, development and maintenance of affordable housing schemes in all counties”;
 - (ii) by inserting the following new paragraph immediately after paragraph (g)—
 - (h) facilitate the provision of services to the projects under the management of the Fund.

CLAUSE 11

THAT clause 11 (4) of the Bill be amended—

- (a) in paragraph (a) by deleting the word “two” and substituting therefor the word “point five (0.5%)”;
- (b) by inserting the following new paragraph immediately after paragraph (b)—
 - (c) not less than point five percent (0.5%) of the monies to the county committees for the administration of the County Committees as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury.
- (c) by inserting the following new subsection immediately after subsection 4 –
 - (4A) The monies under subclause (4)(c) shall be appropriated as a conditional grant to county governments.

CLAUSE 12

THAT clause 12 of the Bill be amended in sub-clause (3) by deleting the words “National Assembly” and substituting therefor the word “Parliament”.

CLAUSE 13

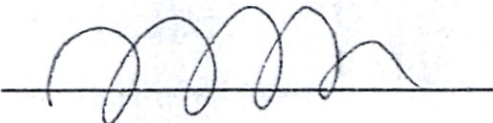
THAT clause 13 of the Bill be amended in sub-clause (3) by deleting the words “the National Assembly for approval before disbursing funds out of the Fund” and substituting therefor the word “Parliament”.

CLAUSE 14

THAT clause 14 of the Bill be amended in sub-clause (3)—

- (a) by deleting the word “his” appearing in paragraph (b) and substituting therefor the word “their”;
- (b) by deleting the word “his” appearing in paragraph (c) and substituting therefor the word “their”;

Signature: _____



CLAUSE 15

THAT clause 15 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (d)—

- (da) inspect and enforce compliance to this Act, guidelines and regulations set under the Act.

CLAUSE 16

THAT clause 16 of the Bill be amended—

- (a) in sub-clause (1) –
 - (i) by deleting paragraph (b) and substituting therefor the following new paragraph—
 - (b) has ten years' experience in a senior management position in the public service or private sector; and
 - (ii) by inserting the following new paragraph—
 - (c) meets the requirements of Chapter Six of the Constitution.
- (b) in sub-clause (2) by deleting the words “other than as an *ex-officio* member” appearing immediately after the word “Board”.

CLAUSE 17

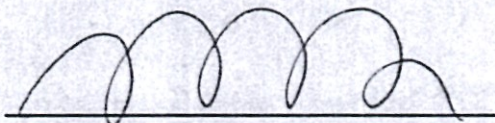
THAT clause 17 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “other than the *ex-officio* members” appearing immediately after the word “Board”;
- (b) in sub-clause (2)–
 - (i) by deleting the words “other than an *ex-officio* member” appearing immediately after the word “Board” in the introductory sentence;
 - (ii) by deleting the words “his or her” appearing in paragraph (d) and substituting therefor the word “their”; and
- (c) in sub-clause (3) by deleting the words “other than an *ex-officio* member” appearing immediately after the word “Board”.

CLAUSE 18

THAT clause 18 of the Bill be amended by deleting the words “other than an *ex-officio* member” appearing immediately after the word “member”.

Signature: _____



CLAUSE 19

THAT clause 19 of the Bill be amended in sub-clause (1) by inserting the word “First” immediately after the words “accordance with the”.

CLAUSE 23

THAT clause 23 of the Bill be amended—

- (a) in sub-clause (2) by inserting the following new paragraph—
 - (c) meets the requirements of Chapter Six of the Constitution; and
- (b) by inserting the following new sub-clause—
 - (3) The Chief Executive Officer shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.

CLAUSE 32

THAT the Bill be amended by deleting clause 32 and substituting therefor the following new section –

Allocation of land.
No. 6 of 2012.

32. (1) The provisions of the Land Act shall, subject to subsection (2), apply to the allocation of public land for the implementation of the affordable housing scheme and development of institutional housing scheme.

(2) Land held by a county government shall not be allocated unless the Board has, in the prescribed manner carried out public participation and stakeholder engagement with the affected community within the county.

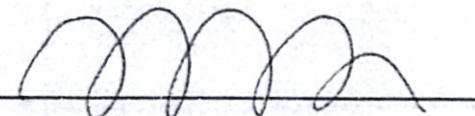
CLAUSE 33

THAT clause 33 of the Bill be amended –

- (a) in sub-clause (1) by deleting the word “Fund” appearing immediately after the word “The” and substituting therefor the word “Board”.
- (b) in sub-clause (2) by deleting the word “Fund” appearing immediately after the words “Act, 2012, the” and substituting therefor the word “Board”.

CLAUSE 34

THAT clause 34 of the Bill be amended by deleting the word “Fund” and substituting therefor the word “Board”.

Signature: 

CLAUSE 35

THAT the Bill be amended by deleting clause 35 and substituting therefor the following new clause —

Agreement with private institutions and persons.

35. (1) The Board may enter into an agreement with a private institution —

(a) to develop and construct affordable housing units and associated social and physical infrastructure; and

(b) for the supply of goods and materials in connection with the construction of affordable housing units.

(2) The Board shall, before entering into an agreement under subsection (1), publish in at least two newspapers of nationwide circulation and on electronic media, a notice of intention to enter into an agreement and invitation of tenders from the public in the prescribed form.

(3) The Cabinet Secretary may, in consultation with the Board, prescribe guidelines for the publication of a notice under subsection (2) and invitations to tender.

CLAUSE 36

THAT clause 36 of the Bill be amended in sub-clause (1) by deleting the word “Fund” and substituting therefor the word “Board”.

CLAUSE 38

THAT clause 38 of the Bill be deleted and substituted with the following new clause—

Eligibility criteria.

38. (1) A person is eligible for allocation of one affordable housing unit if the person meets the criteria prescribed in regulations.

(2) In this section, a person means a natural person

CLAUSE 39

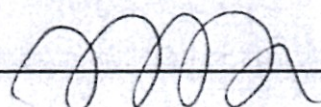
THAT clause 39 of the Bill be amended in subclause (1) by deleting the words “section 30” and substituting therefor the words “section 38”.

CLAUSE 40

THAT clause 40 of the Bill be amended by—

(a) renumbering the current paragraph as subclause (1); and

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

Signature: 

(2) The Cabinet Secretary may in consultation with the Board issue regulations for the better carrying out of subsection (1).

CLAUSE 42

THAT clause 42 of the Bill be amended by deleting sub-clause (4) and substituting therefor the following new sub-clauses—

(4) A person who has made a voluntary saving and has not been allocated an affordable housing unit—

(a) may withdraw their savings by issuing ninety days' written notice to the agency for refund with any accrued interest; or

(b) may apply to the Board for approval of issuance of an affordable mortgage to develop a rural affordable housing unit;

(5) An application in sub-section (4) (b) will be accompanied by an agreement that the applicant agrees to have their saved deposits and the land upon which the unit is to be built to be used as collateral.

(6) Upon approval by the Board, the applicant shall cause a charge on the title in subsection (5) to be executed in favour of the Board.

CLAUSE 44

THAT clause 44 (2) of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) to a fine not exceeding twenty million shillings or imprisonment of a term not exceeding ten years, or both; and.

CLAUSE 45

THAT clause 45 of the Bill be amended in sub-clause (1) by deleting the words "he is" appearing in paragraph(b)(i) and substituting therefor the word "they are".

CLAUSE 47

THAT clause 47 of the Bill be amended—

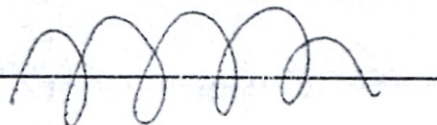
(a) in sub-clause (2) by inserting the following new paragraphs—

(i) immediately after paragraph (a)—

(ab) criteria for eligibility of allocation of an affordable housing unit under section 38 after paragraph (a);

(ii) immediately after paragraph (i);

Signature: _____



- (j) the typology and dimensions for affordable housing units relative to the incomes of the individual applicants;
 - (k) the procedural guidelines for the Board to off-take affordable housing units under an affordable housing scheme;
 - (l) the interest rate or administration fee for a loan issued under section 41; and
 - (m) criteria for eligibility of allocation of a low interest mortgage under section 42.
- (b) by inserting the following new sub-clauses—

(3) The Cabinet Secretary shall table before Parliament, the regulations made under this section within thirty days of commencement of this Act.

(4) Regulations made under this section shall not take effect unless approved by a resolution passed by Parliament.

(5) If a House of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after submission to it for approval, the House shall be deemed to have approved those regulations.

CLAUSE 48

THAT clause 48 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3) –

(4) Any ongoing project or programme on affordable housing implemented pursuant to a commitment or obligation under subsection (3) shall be deemed to be a project or programme commenced under this Act.

CLAUSE 49

THAT clause 49 of the Bill be amended in sub-clause (1) by inserting the word “before” after the word “immediately”.

NEW CLAUSES

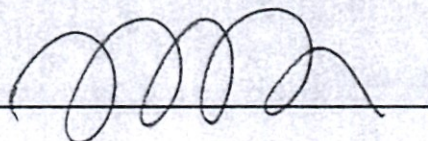
THAT the Bill be amended by inserting the following new clauses immediately after clause 11—

NEW CLAUSE 11A

Investments by
the Board.

11A. The Board may, with the approval of the Cabinet Secretary in charge of Treasury, invest any income that is not immediately required.

Signature: _____



NEW CLAUSE 11B

Borrowing by **11B.** The Board may, with the approval of the Cabinet Secretary in charge of Treasury, borrow funds for the advancement of the objectives of the Act.

THAT the Bill be amended by inserting the following new clauses immediately after clause 31—

NEW CLAUSE 31A

PART III (A) —ROLE OF THE COUNTY GOVERNMENTS IN AFFORDABLE HOUSING

Establishment of County Rural and Urban Affordable Housing Committees. **31A.** (1) There is established in every county, a County Rural and Urban Affordable Housing Committee.

(2) The County Committee shall consist of the following—

- (a) a non-executive chairperson who shall be nominated by the county governor;
- (b) the County Executive Committee member responsible for matters relating to housing or their representative designated in writing;
- (c) three other persons who shall be nominated by the county governor, of whom—

(i) one shall be a representative of a registered association of traders operating in the county;

(ii) one shall be a representative of a registered residential association; in the county;

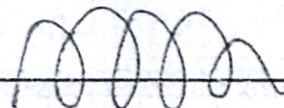
(iii) one shall be a member of the public residing within the county; and

(d) the chief officer for the time being in charge of housing, who shall be an *ex-officio* member and the secretary to the County Committee.

(3) A person nominated under subsection (2) (a) and subsection (2) (d), shall be vetted and approved by the county assembly.

(4) In nominating a person as a member under subsection (2) (a) and subsection (2) (d), the county governor shall—

Signature: _____



- (a) ensure that not more than two-thirds of the members are of the same gender;
 - (b) ensure that ethnic minorities within the county are adequately represented; and
 - (c) consider marginalized groups including youth and persons with disability.
- (5) The members of the Committee shall be appointed within thirty days of the commencement of this Act.

NEW CLAUSE 31B

Qualifications for appointment.

31B. (1) A person qualifies to be appointed as the Chairperson of the County Committee if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least five years' experience in matters relating to housing, built environment, banking, or finance;
- (c) has resided in the county for a period of not less than five years.; and
- (d) meets the requirements of Chapter Six of the Constitution

(2) A person qualifies to be appointed as a member of the County Committee, if the person—

- (a) meets the requirements of Chapter Six of the Constitution;
- (b) has not been convicted of a criminal offence which attracts imprisonment for a term not exceeding six months;
- (c) has not been adjudged bankrupt or entered into a composition or arrangement with the creditors of the person; and
- (d) is not disqualified under any other written law from appointment as such.

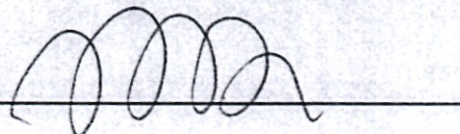
NEW CLAUSE 31C

Tenure of office.

31C. (1) The Chairperson and members of the County Committee, shall hold office for a term of three years and may be eligible for re-appointment for an additional final term of three years.

(2) Notwithstanding the provisions of subsection (1), a member of the County Committee may be removed from office if that person—

Signature: _____



- (a) has been absent from three consecutive meetings of the Committee without justifiable cause or the written permission of the Chairperson;
- (b) is adjudged bankrupt or enters into a composition or arrangement with the creditors of the person;
- (c) is convicted of an offence involving anti-economic crimes or corruption;
- (d) becomes incapable of carrying out the functions of their office due to an infirmity of mind or body;
- (e) violates Chapter Six of the Constitution; or
- (f) fails to disclose any interest in a matter under consideration by the Committee as provided for under this Act.

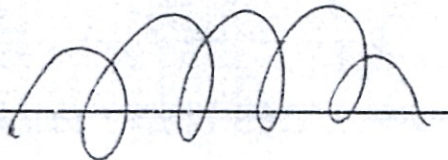
NEW CLAUSE 31D

Remuneration of the County Committee members. **31D.** The Chairperson and the members of the County Committee shall be paid such sitting allowances or other remuneration for expenses as recommended by the Salaries and Remuneration Commission.

NEW CLAUSE 31E

Conduct of affairs and business of the County Committee. **31E.** (1) The conduct of affairs and business of the County Committee shall be in accordance with the First Schedule of this Act.
(2) Subject to subsection (1), the Committee may amend its own procedures for the better carrying out of its functions.

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NEW CLAUSE 31F

Functions of the **31F.** (1) The County Committee shall—

County
Committee.

- (a) in consultation with the Board, develop a framework for the attainment of affordable housing in the county;
- (b) advise the governor on affordable housing programmes within the county;
- (c) develop a five-year affordable housing investment programme for the county and annual housing investment programme for the county;
- (d) collaborate with the boards of cities and municipalities in developing plans for social and physical infrastructure related to affordable housing pursuant to section 21 of the Urban Areas and Cities Act;
- (e) make periodical written reports on the five-year affordable housing investment programme for the county and annual housing investment programme for the county to the Board;
- (f) to make annual reports to the county assembly on the implementation of affordable housing in the county; and
- (g) to perform such other duties as may be assigned by the county governor in writing.

Cap 303, Laws of
Kenya.

NEW CLAUSE 31G

County
legislation.

31G. Nothing in this Act shall preclude county governments from enacting legislation related to affordable housing in the counties.

NEW CLAUSE 37A

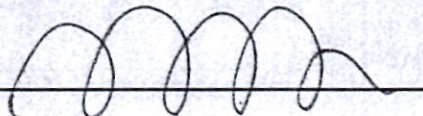
THAT the Bill be amended by inserting the following new section immediately after clause 37

Priority of
ownership for
slum residents.

37A. (1) The Board shall, where an affordable housing project is to be implemented on land on which exists a settlement, —

- (a) issue a notice, in the prescribed form, to the residents in that settlement of the intended implementation of the project
- (b) put in place a mechanism for the resettlement of the residents; and
- (c) offer to the residents in that settlement, the first right of purchase of a unit in the project.

Signature: _____



NEW CLAUSES

THAT the Bill be amended by inserting the following new sections immediately after section 42

PART VA – OWNERSHIP OF AFFORDABLE HOUSING UNITS

Issuance of a certificate of ownership.

42A. (1) The Board shall, with the approval of the Cabinet Secretary, transfer the ownership of an affordable housing unit to a qualified applicant upon completion of payment of the agreed price.

(2) The Registrar shall not, without the written consent of the Board, register a transfer of any housing unit under this Act.

(3) The certificate of the Board that any affordable housing unit has been sold to an individual under the provisions of this Act shall be conclusive evidence of consent under subsection (2).

(4) The registration of an owner of affordable housing units shall be undertaken in accordance with the Sectional Properties Act.

Restrictions to owners of affordable housing unit.

42B. Except with the prior written consent of the Board, a purchaser of an affordable housing unit under this Act shall not by contract, agreement or otherwise, sell or agree to sell his or her unit or any interest therein to any other person.

FIRST SCHEDULE

THAT the First Schedule of the Bill be amended—

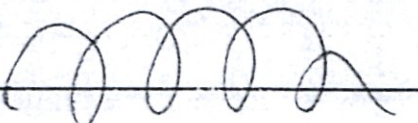
- (a) in paragraph 1 by deleting the words “at least half” appearing in sub-paragraph (4) and substituting therefor the word “majority”; and
- (b) in paragraph 2 by deleting the words “fifty plus one” and substituting therefor the words “majority”.

THIRD SCHEDULE

THAT the Third Schedule of the Bill be amended by inserting the following new paragraphs immediately in paragraph 5—

5A. National Construction Authority.

5B. State Department responsible for matters relating to Public Works.

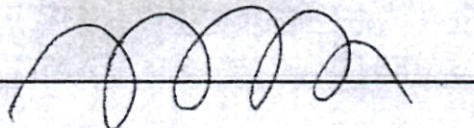
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CLAUSE 2

THAT clause 2 of the Bill be amended—

- (a) in sub – clause (1) by inserting the following new definition—
“County Committee” means the County Affordable Housing Committee established under Part IV of this Act;
- (b) by deleting sub-clause (2) and inserting the following new sub-clause —
 - (2) For purposes of this Act, “affordable housing unit” refers to —
 - (a) a social housing unit means a house targeted to a person whose monthly income is below twenty thousand shillings;
 - (b) an affordable housing unit means a house targeted at a person whose monthly income is between twenty thousand and one hundred and forty-nine thousand shillings;
 - (c) affordable middle class housing unit means middle to high income housing targeted at persons whose monthly income is over one hundred and forty-nine thousand shillings; or
 - (d) rural affordable housing unit means a house under section 42 targeted at a person living in any area which is not an urban area.

Signature: _____

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