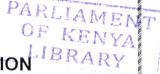
REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY



TENTH PARLIAMENT - FOURTH SESSION

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING ON THE TRAFFIC (AMENDMENT) BILL, 2012(BILL NO. 29 OF 2012)

Clerk's Chambers **National Assembly NAIROBI**

SEPTEMBER 2012

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PREFACE

The Departmental Committee on Transport, Public Works and Housing was constituted pursuant to provisions of Standing Order No. 198 and mandated to among other things, investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments. The Committee is also mandated to study and review all legislation referred to it and make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Members of the Committee are:-

- i. Hon. David Were, M.P.- Chairperson
- ii. Hon. Isaac Muoki, M.P. Vice Chairperson
- iii. Hon. Edwin Yinda, M.P.
- iv. Hon. Yusuf K. Chanzu, M.P.
- v. Hon. (Dr.) Wilbur Otichilo, M.P.
- vi. Hon. Clement Wambugu, M.P.
- vii. Hon. Benjamin Langat. M.P.
- viii. Hon. Walter Nyambati, M.P
 - ix. Hon. Joseph Kiuna, M.P.
 - x. Hon. Boaz Kaino, M.P.

The Traffic (Amendment) Bill, 2012 was moved by the Minister for Transport. It was read a first time on 15TH August 2012 and committed to the Committee. Debate on the Second reading commenced and was

concluded on 18th September 2012.

This Report contains the amendments proposed by Committee members. It is my pleasure to present the report to the House.

HON. DAVID WERE, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING

CONSIDERATION OF THE TRAFFIC (AMENDMENT) BILL, 2012

On 19th September 2012, the Committee with the assistance of Parliamentary Legal Counsel, considered the Bill by itself. Members considered the Bill Clause by Clause, as follows;

Clause 1 -No amendments proposed

Clause 2 -The Committee proposed to delete the Word "Commissioner of Police" appearing under the proposed new sub clause 11(b) under Section 6 of the Principal Act, and replace it with Inspector General of Police, in order to comply with the Constitution.

Clauses 3-7 -No amendments proposed

Clause 8 - The Committee proposed that the driver of a public Service Vehicle or Commercial vehicle should undergo a driving test every 3 years, as a condition for renewal of licence.

Clauses 9-11-No amendments proposed

Clause 12 - The Committee proposed to reduce the penalties contained therein to one hundred thousand and two years respectively, to avoid congestion of prison cells as the earlier proposed penalty was too high for the group targeted, which would make most of them end in jail.

Clause 13 - The Committee proposed to reduce the penalties contained therein to one hundred thousand and two years respectively, for the same reasons as Clause 12.

Clause 14 -The Committee proposed an additional sub clause 3, to make provision for a second offender to be jailed for six months without an option of fine, to make the punishment more punitive. The words "or both" at the end of sub clause 2 should be deleted to avoid double punishment to an offender, in circumstances where the Court orders that both jail term and fine applies.

Clause 15 – The Committee proposed deletion of the words "or both" appearing at the end of sub clause 1(a).

Clauses 16-17 -No amendments proposed.

Clause 18 -The words "or both" appearing at the end of sub clause 2(a) and (b) be deleted.

Clauses 19-20 -No amendments proposed.

Clause 21 - The Committee proposed that the penalty of twenty thousand was too high for the offence envisaged and as such this should be reduced to ten thousand Shillings.

Clause 22 -No amendments proposed

Clause 23 - The Committee proposed that the penalty of thirty thousand shillings proposed therein was too low and should be increased to fifty thousand shillings.

Clause 24 - The Meeting proposed that a new sub clause be inserted to increase the hours of driving to 12 hours, due to the improved technology in motor vehicles, as compared 8 hours that was the prescribed maximum hours of driving permissible per day. Further, the words "or to both" appearing at the end of sub clause 2(a) be deleted.

Clauses 25-31 - No amendments proposed

Clauses 32-34 - The Committee proposed that the penalties in these clauses all be harmonized to read one hundred thousand shillings instead of ten thousand shillings.

Clause 35 -No amendments proposed

Clause 36 -The Committee proposed that the penalty therein be reduced to five thousand shillings, as ten thousand shillings was too punitive for the

offence.

Clause 37 -No amendments proposed

Clause 38 -The Committee proposed that the penalty of twenty thousand shillings proposed under sub clause (a) and (b) be reduced to ten thousand shillings.

Clause 39 - The Committee proposed that the words "or to both" be deleted.

Clause 40 -No amendments proposed.

Clause 41 - The Committee proposed that the words "or to both" be deleted.

Clause 42 - The Committee proposed that this clause be deleted and a new clause be inserted to cater for drivers' physical examination, in terms of hearing and eye sight.

Clause 43- The Committee proposed that the words "or both" appearing at the end of sub clause (b) be deleted.

Clauses 44-47 -No amendments proposed.

Clause 48 -The Committee proposed that the fine of fifty thousand shillings and seventy five thousand shillings respectively, proposed therein were too hefty and should be reduced to ten thousand shillings and twenty thousand shillings respectively.

Clause 49 -No amendments proposed.

Schedule - No amendments proposed

SUMMARY OF PROPOSED AMENDMENTS

THE TRAFFIC (AMENDMENT) BILL, 2012

COMMITTEE STAGE AMENDMENTS

NOTICE is given that the Member for Matungu and Chairman of the Departmental Committee on Transport, Public Works and Housing (Hon. David Were, MP) intends to move the following amendments to the Traffic (Amendment) Bill 2012, at the Committee Stage-

CLAUSE 2

THAT, clause 2 be amended in the proposed new subsection (11)(b) by deleting the words "Commissioner of Police" and substituting therefor the words "Inspector-General of the Police".

CLAUSE 8

THAT, clause 8(b) be amended by inserting the words "every three years" immediately after the word "undergo" in the proposed new subsection (6).

CLAUSE 12

THAT, clause 12 be amended by deleting the words "five hundred thousand" and "ten years" and substituting therefor the words "one hundred thousand" and "two years" respectively.

CLAUSE 13

THAT, clause 13 be amended by deleting the words "five hundred thousand" and "ten years" and substituting therefor the words "one hundred thousand" and "two years" respectively.

CLAUSE 14

THAT, clause 14 be amended be amended by deleting subsection (2) of the proposed new section 45A and substituting therefor the following new subsection—

- "(2) A person who contravenes subsection (1) commits an offence and shall be liable—
 - (a) for a first conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding thirty thousand shillings; and
 - (b) for a second or subsequent conviction, to imprisonment for a term not exceeding six months."

CLAUSE 15

THAT, clause 15 be amended in the proposed new subsection (1) by—

- (a) deleting the words "or both" appearing in paragraph (a);
- (b) deleting the words "or to both" appearing in paragraph (b).

CLAUSE 18

THAT, clause 18 be amended in the proposed new subsection (2) by—

- (a) deleting the words "or to both" appearing in paragraph (a);
- (b) deleting the words "or to both" appearing in paragraph (b).

CLAUSE 21

THAT, clause 21 be amended by deleting the words "twenty thousand" and substituting therefor the words "ten thousand".

CLAUSE 23

THAT, clause 23 be amended by deleting the words "thirty thousand" and substituting therefor the words "fifty thousand".

CLAUSE 24

THAT, clause 24 be amended by—

- (a) renumbering the existing provision as subclause (2);
- (b) inserting the following new subclause immediately before the renumbered subclause (2)—
 - "(1) Section 66A of the principal Act is amended in subsection (1) by deleting the words "eight hours" and substituting therefor the words "twelve hours".
- (c) in the renumbered subclause (2), by—
 - (i) deleting the words "or to both" appearing in paragraph (a);
 - (ii) deleting the words "or to both" appearing in paragraph (b).

CLAUSE 32

THAT, clause 32 be deleted and replaced with the following new clause—

Amendment 32. Section 85 of the principal Act is amended by of section deleting the words "one thousand" and "three months" 85 of Cap. and substituting therefor the words "one hundred thousand" and "two years" respectively.

CLAUSE 33

THAT, clause 33 be deleted and replaced with the following new clause—

Amendment 33. Section 86 of the principal Act is amended by of section deleting the words "one thousand" and "three months" and substituting therefor the words "one hundred thousand" and "two years" respectively.

CLAUSE 34

THAT, clause 34 be amended by deleting the words "ten thousand" and substituting therefor the words "one hundred thousand".

CLAUSE 36

THAT, clause 36 be amended by deleting the words "ten thousand" and substituting therefor the words "five thousand".

CLAUSE 38

THAT, clause 38 be amended by—

- (a) deleting the words "twenty thousand" and substituting therefor the words "ten thousand" in paragraph (a);
- (b) deleting the words "twenty thousand" and substituting therefor the words "ten thousand" in paragraph (b).

CLAUSE 39

THAT, clause 39 be amended in the proposed new subsection (2) by deleting the words "or to both".

CLAUSE 41

THAT, clause 41 be amended by deleting the words "or both" appearing immediately after the words "one year".

CLAUSE 42

THAT, clause 42 be deleted and replaced with the following new clause—

Insertion of 42. The principal Act is amended by inserting the new following new section immediately after section 105—section 105A in Cap. 403.

Driver of 105A. (1) A driver of a public service a public vehicle or a commercial vehicle shall, after every service three years from the date of issue of a driving

undergo fitness test.

vehicle to licence pursuant to section 30, or renewal of such licence, whichever is the case, undergo a physical fitness test, including an eye and hearing test, by a qualified medical practitioner.

> (2) A driving licence shall not be renewed under this Act unless the person seeking the renewal produces to a licensing officer a report prepared by the medical practitioner certifying the condition of the applicant's physical fitness, including the condition of the person's eye sight and hearing ability, and whether or not that condition or ability makes the applicant fit to drive a motor vehicle.

CLAUSE 43

THAT, clause 43 be amended—

(a) in paragraph (a), by deleting the words "or to both" appearing in the proposed new provision;

(b) deleting the words "or both" appearing in paragraph (b).

CLAUSE 48

THAT, clause 48 be amended by deleting the words "fifty thousand" and "seventy-five thousand" and substituting therefor the words "ten thousand" and "twenty thousand" respectively.

HON. DAVID WERE, MP

MINUTES OF THE 163RD SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING HELD ON THURSDAY 20TH SEPTEMBER 2012, IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 AM

PRESENT

Hon. David Were, M.P.- Chairperson

Hon. Edwin Yinda, M.P.

Hon. Yusuf K. Chanzu, M.P.

Hon. Joseph Kiuna, M.P.

ABSENT WITH APOLOGY

Hon. Isaac Muoki, M.P. - Vice - Chairperson

Hon. Clement Wambugu, M.P.

Hon. Benjamin Langat, M.P.

Hon. Walter Nyambati, M.P.

Hon. (Dr.) Wilbur Ottichilo, M.P.

Hon. Boaz Kaino, M.P.

IN ATTENDANCE KENYA NATIONAL ASSEMBLY

Ms. Josephine Kusinyi

-Clerk Assistant

MIN. NO. 872/2012 PRELIMINARY

The Chair called the meeting to order at 10:30am and said a word of prayer.

MIN. NO. 873/2012 ADOPTION OF THE AGENDA

The following Agenda of the Meeting was adopted;

- i. Confirmation of Minutes of previous sittings
- ii. Adoption of Committee's Reports on the two Traffic (Amendment) Bills 2012 by the Minister for Transport and Hon. Jakoyo Midiwo, MP
- iii. Adoption of Committee's Report on the National Transport and Safety Authority Bill, 2012

MIN.NO.874/2012 CONFIRMATION OF MINUTES

Minutes of the 161st and 162nd Sittings held on 19th September 2012 were confirmed as a true record and signed by the Chair.

MIN.NO.875/2012 ADOPTION OF COMMITTEE'S REPORTS

The following Reports were adopted:

- i. Report on the Traffic Amendment Bill, Bill No. 29 of 2012
- ii. Report on the Traffic Amendment Bill, Bill No. 8 of 2012
- iii. Report on the National Transport and Safety Authority Bill, 2012.

MIN. NO. 876/2012 ADJOURNMENT OF THE MEETING

There being no other business for consideration, the meeting was adjourned at

SIGNED CHAIRPERSON

DATE 20TH SEPTEMBER 2012

MINUTES OF THE 162ND SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING HELD ON WEDNESDAY 19TH SEPTEMBER 2012, IN THE COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE AT 4:00 PM

PRESENT

Hon. David Were, M.P.- Chairperson

Hon. Benjamin Langat, M.P.

Hon. Edwin Yinda, M.P.

ABSENT WITH APOLOGY

Hon. Isaac Muoki, M.P. – Vice – Chairperson

Hon. Clement Wambugu, M.P.

Hon. Walter Nyambati, M.P.

Hon. (Dr.) Wilbur Ottichilo, M.P.

Hon. Yusuf K. Chanzu, M.P.

Hon. Joseph Kiuna, M.P.

Hon. Boaz Kaino, M.P.

IN ATTENDANCE

Hon. Jakoyo Midiwo, MP Hon. Emilio Kathuri, MP

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

Ms. Josephine Kusinyi

-Clerk Assistant

Mr. Michael Karuru

-Legal Counsel

MIN. NO. 867/2012 PRELIMINARY

The Chair called the meeting to order at 4:30pm and said a word of prayer.

MIN. NO. 868/2012 ADOPTION OF THE AGENDA

The Agenda of the Meeting, to consider the Traffic (Amendment) Bill, 2012 and the National Transport and Safety Authority Bill, 2012 was adopted.

MIN.NO.869/2012 CONSIDERATION OF THE TRAFFIC (AMENDMENT) BILL, 2012

The Meeting considered the above Bill, sponsored by Hon. Jakoyo Midiwo, MP, as follows;

Clause 1 -No amendments proposed

Clause 2 - The Meeting proposed that the clause be deleted as it was a hectic proposal to surrender identification plates to the Registrar at every sale or transfer of a motor vehicle.

Clause 3 -No amendments proposed

Clauses 4-6 - The Meeting proposed these clauses be deleted as they were already contained in the Minister's Bill at Clauses 12, 13 and 14 respectively.

Clause 7 - The Meeting proposed that the clause be deleted, as life imprisonment for a traffic offense was extremely punitive.

Clause 8 -No amendments proposed

Clause 9 - The Meeting proposed that under the new sub clause 5A(a), the words "up to ten" be deleted and replaced with "more than 20", so as to increase the number of kilometers per hour that can be considered high in terms of violation of speed limits.

Clause 10 - The Meeting proposed that under sub clause 1A, the notice of roads to be closed should also be contained in the print media and radio stations, in addition to the Gazette.

Clause 11- No amendments proposed

Clause 12-The Meeting proposed that under 103C (3), the words ten before years and five before hundred be replaced with three and one respectively and the words 'or to both' appearing at the end be deleted.

Clause 13 -be deleted as it is captured in the Minister's Bill.

Clause 14- The Meeting proposed that Section 117B be deleted as the Traffic

Department was still important.

MIN.NO.870/2012 CONSIDERATION OF THE NATIONAL TRANSPORT AND SAFETY AUTHORITY BILL, 2012

The Meeting considered the above Bill, sponsored by the Minister for Transport, as follows;

Clause 1 -No amendments proposed

Clause 2 -The Meeting noted that under the definition of the word "levy", the correct section was 46 and not 45.

Clauses 3-5 - No amendments proposed

Clause 6 -The Meeting proposed that under sub clause (f) the word six be replaced with five and a new sub clause be inserted to cater for two persons from the Transport Sector.

Clauses 7-39 -No amendments proposed

Clause 40 -The Meeting proposed that under Sub Clause (1) immediately below sub clause (1b), the word "three" be replaced with the word "one", to reduce the penalty as generally offenses under the Penal Code do not carry hefty fines. Likewise, the word "or both" at the end of the sentence should be deleted.

Clause 41 - The Meeting proposed that the fine of five hundred thousand was too punitive and should be replaced with one hundred thousand and the words "or both appearing at the end of the Section should be deleted.

Clause 42 -The Meeting proposed that the fines of two thousand and five thousand proposed were too lenient and should be replaced with five thousand and twenty thousand respectively. The words "or both" appearing at the end of sub section (2) should also be deleted

Clause 43 – No amendments proposed

Clause 44-The Meeting proposed that under sub section (4), three hundred

thousand shillings was a hefty fine and should be replaced with one hundred shillings and the last sentence from the word or, be completely deleted.

Clauses 45-51 -No amendments proposed

Clause 52- The Meeting proposed that the word "Commission" appearing at the end of sub clause (1) was misplaced and should be replaced by the word "Authority", likewise under sub clause (2, the word "audit" should be deleted and be replaced with "Finance Management" which is the name of the relevant Act.

Clause 53- The words "or both" appearing at the end of sub clause (1) should be deleted.

Clause 54-No amendment proposed

Clause 55 - The Meeting noted that this clause was missing.

Clauses 56-63 - No amendments proposed

First Schedule-The Meeting noted that the relevant Statute was Cap 403 and not 406.

Second Schedule-The Meeting proposed that under Section 1(1), provision should be included to deter the Board from meeting too frequently. The Meeting also proposed that the word "Commission" under Section 1(7) is misplaced and should be replaced with the word "Board".

MIN. NO. 871/2012 ADJOURNMENT OF THE MEETING

There being no other business for consideration, the meeting was adjourned at 6:34pm.

SIGNED CHAIRPERSON

DATE 20TH SEPTEMBER 2012

MINUTES OF THE 161ST SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING HELD ON WEDNESDAY 19TH SEPTEMBER 2012, IN THE COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE AT 10:30 AM

PRESENT

Hon. David Were, M.P.- Chairperson

Hon. Isaac Muoki, M.P. – Vice – Chairperson

Hon. Clement Wambugu, M.P.

Hon. Benjamin Langat, M.P.

Hon. Edwin Yinda, M.P.

Hon. Joseph Kiuna, M.P.

Hon. Boaz Kaino, M.P.

ABSENT WITH APOLOGY

Hon. Walter Nyambati, M.P.

Hon. (Dr.) Wilbur Ottichilo, M.P.

Hon. Yusuf K. Chanzu, M.P.

IN ATTENDANCE

Hon. Emilio Kathuri, MP

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

Ms. Josephine Kusinyi

-Clerk Assistant

Mr. Michael Karuru

-Legal Counsel

MIN. NO. 862/2012 PRELIMINARY

The Chair called the meeting to order at 10:30am and said a word of prayer.

MIN. NO. 863/2012 ADOPTION OF THE AGENDA

The Agenda of the Meeting, to consider the Traffic (Amendment) Bill, 2012 and the National Transport and Safety Authority Bill, 2012 was adopted.

MIN. NO. 864/2012

CONSIDERATION OF THE TRAFFIC (AMENDMENT) BILL, 2012

The Meeting considered the above Bill, sponsored by the Minister for Transport, as follows;

Clause 1 -No amendments proposed

Clause 2 - The Meeting proposed to delete the Word "Commissioner of Police" appearing under the proposed new sub clause 11(b) under Section 6 of the Principal Act, and replace it with Inspector General of Police, in order to comply with the Constitution.

Clauses 3-7 - No amendments proposed

Clause 8 - The Meeting proposed that the driver of a public Service Vehicle or Commercial vehicle undergo a driving test every 3 years, as a condition for renewal of licence.

Clauses 9-11-No amendments proposed

Clause 12 - The Meeting proposed to reduce the penalties contained therein to one hundred thousand and two years respectively, to avoid congestion of prison cells as the earlier proposed penalty was too high for the group targeted.

Clause 13 - The Meeting proposed to reduce the penalties contained therein to one hundred thousand and two years respectively, for the same reasons as Clause 12.

Clause 14 - The Meeting proposed an additional sub clause 3, to make provision for a second offender to be jailed for six months without an option of fine, to make the punishment more punitive. The words or both at the end of sub clause 2 should be deleted to avoid double punishment to an offender, in circumstances where the Court orders that both jail term and fine applies.

Clause 15 - The Meeting proposed deletion of the words "or

both"appearing at the end of sub clause 1(a).

Clauses 16-17 -No amendments proposed.

Clause 18 -The words or both appearing at the end of sub clause 2(a) and (b) be deleted.

Clauses 19-20 -No amendments proposed.

Clause 21 - The Meeting proposed that the penalty of twenty thousand shillings was too high for the offence envisaged and as such this should be reduced to ten thousand Shillings.

Clause 22 -No amendments proposed

Clause 23 - The Meeting proposed that the penalty of thirty thousand shillings proposed therein was too low and should be increased to fifty thousand shillings.

Clause 24 - The Meeting proposed that a new sub clause be inserted to increase the maximum hours of driving to 12 hours, due to the improved technology in motor vehicles, as compared to 8 hours that was prescribed as maximum hours of driving permissible per day. Further, the words "or to both" appearing at the end of sub clause 2(a) be deleted.

Clauses 25-31 - No amendments proposed

Clauses 32-34 - The Meeting proposed that the penalties in these clauses all be harmonized to read one hundred thousand shillings instead of ten thousand shillings.

Clause 35 -No amendments proposed

Clause 36 -The Meeting proposed that the penalty therein be reduced to five thousand shillings, as ten thousand shillings was too punitive for the offence.

Clause 37 -No amendments proposed

Clause 38 - The Meeting proposed that the penalty of twenty thousand shillings proposed under sub clause (a) and (b) be reduced to ten thousand shillings.

Clause 39 - The meeting proposed that the words "or to both" be deleted.

Clause 40 -No amendments proposed.

Clause 41 - The meeting proposed that the words "or to both" be deleted.

Clause 42 - The meeting proposed that this clause be deleted and a new clause be inserted to cater for drivers' physical examination, in terms of hearing and eye sight.

Clause 43- The meeting proposed that the words "or both" appearing at the end of sub clause (b) be deleted.

Clauses 44-47 -No amendments proposed.

Clause 48 - The meeting proposed that the fine of fifty thousand and seventy five thousand respectively, proposed therein were too hefty and should be reduced to ten thousand and twenty thousand respectively.

Clause 49 -No amendments proposed.

Schedule - No amendments proposed.

MIN.NO.865/2012 CONSIDERATION OF THE NATIONAL TRANSPORT AND SAFETY AUTHORITY BILL, 2012

This Agenda was deferred to the afternoon sitting.

MIN. NO. 866/2012 ADJOURNMENT OF THE MEETING

There being no other business for consideration, the meeting was adjourned

at 1:00pm.

SIGNED

CHAIRPERSON

DATE

20TH SEPTEMBER 2012