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THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT- THIRD SESSION - 2015



THE DEPARTMENTAL COMMITTEE ON ENERGY, COMMUNICATION
AND INFORMATION

REPORT ON THE ENERGY BILL, 2015

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDING
NAIROBI

10TH NOVEMBER 2015



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1.0 PREFACE

Hon Speaker,

On behalf of the Departmental Committee on Energy, Communication and Information and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of The Energy Bill, 2015. The Bill was committed to the Committee on 20th August, 2015 and it is on the basis of this that the Committee presents this report pursuant to Standing Order 127.

1.1 Mandate of the Committee

The Departmental Committee on Energy, information & Communication is one of the twelve Departmental committees of the National Assembly established under Standing Order 216 whose mandates are as follows pursuant to the Standing Order 216 (5) which outlines functions of the Committee as being:

- a) 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;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all the legislation referred to it;
- d) To study, access and analyse the relative success of the ministries and departments measured by the results obtained as compared with their stated objective;
- e) To investigate and inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a Cabinet Secretary;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments); and
- g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider:-Fossil fuels exploration, Development of energy, Production of energy, Maintenance and regulation of energy, Communication, Information, Broadcasting and Information Communications Technology (ICT) development and management

1.2 Committee Membership

The Committee on Energy, Communication and Information was constituted by the House in May, 2013 comprising of the following Members:

1. The Hon. Jamleck Kamau, EGH, MP.....Chairperson
2. The Hon. Jackson Kiptanui, MPVice –Chairperson
3. The Hon. Mohammed Elmi, EGH, MP
4. The Hon. Edick Anyanga, MP
5. The Hon. (Eng.) James Rege, MP
6. The Hon. Mithika Linturi, MP
7. The Hon. Zebedeo Opore, MP
8. The Hon. Mary Mbugua, HSC, MP
9. The Hon. Aburi Mpuru, MP
10. The Hon. Aramat Lemanken, MP
11. The Hon. Arthur Odera, MP
12. The Hon. Banticha Abdullahi, MP
13. The Hon. Dan Kazungu, MP
14. The Hon. Esther Gathogo, MP
15. The Hon. Fathia Mahbub, MP
16. The Hon. James Lomenen, MP
17. The Hon. Joe Mutambu, MP
18. The Hon. John Munuve, MP
19. The Hon. Junet Sheikh, MP
20. The Hon. Cecily Mbarire, MP
21. The Hon. Nicholas Ngikor, MP
22. The Hon. Onesmus Njuki, MP
23. The Hon. Rachael Amolo, MP
24. The Hon. Roba Duba, MP
25. The Hon. Ndung’u Gethenji, MP
26. The Hon. (Eng.) Vincent Musau, MP
27. The Hon. William Kisang’, MP
28. The Hon. Richard Tongi, MP
29. The Hon. Moses Kuria, MP

1.3 Consideration of the Bill

The Energy Bill, 2015 was published and read a First Time on 20th August, 2015 and thereafter committed to the departmental Committee on Energy, Communication and Information for consideration pursuant to Standing Order 127.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the dailies namely, Nation and Standard newspapers on 25th August, 2015 pursuant to Article 118 of the Constitution. The Committee also met with the officers from the Ministry of Energy and Petroleum and the Kenya

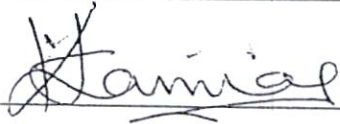
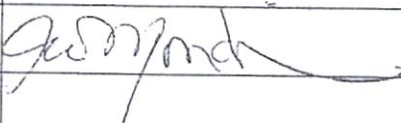
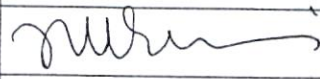
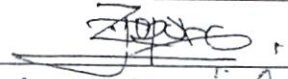
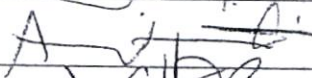
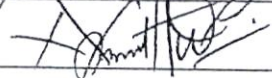
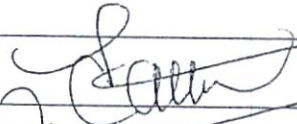
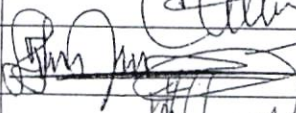

Private Sector Alliance. The Committee received memoranda from the Kenya Private Sector Alliance and the views are captured and contained in the body of the Report.

The Ag. Cabinet Secretary for the Ministry of Energy and Petroleum, Mr. Henry Rotich made the summary presentation which mainly addressed the amendments raised by the stakeholders.

The Committee having held meetings with the various stakeholders, analyzed submissions from the public observed that the Bill is critical in the management of the Energy Industry in a more effective and efficient manner but also falls short in certain areas to which the Committee will be proposing amendments as contained in the report during the Committee Stage of the Bill.

1.4 Adoption of the Report

We the Members of the Departmental Committee on Energy, Communication and Information have pursuant to Standing Order 199 adopted this Report on The Energy Bill, 2015 and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today 10th November 2015.

NO.	NAME	SIGNATURE
1.	HON. JAMLECK KAMAU, EGH, MP (CHAIRPERSON)	
2.	HON. JACKSON KIPTANUI, MP (VICE CHAIR)	
3.	HON. OMONDI ANYANGA, MP	
4.	HON.(ENG.) JAMES REGE, MP	
5.	HON. MOHAMMED ELMI, EGH, MP	
6.	HON. MITHIKA LINTURI, MP	
7.	HON. ZEBEDEO OPORE, MP	
8.	HON. ABURI MPURU, MP	
9.	HON. ARAMAT LEMANKEN, MP	
10.	HON. ARTHUR ODERA, MP	
11.	HON. BANTICHA ABDULLAHI, MP	
12.	HON. DANIEL KAZUNGU, MP	
13.	HON. ESTHER GATHOGO, MP	
14.	HON. ROBA DUBA, MP	
15.	HON. FATHIA MAHBUB, MP	
16.	HON. JAMES LOMENEN, MP	
17.	HON. JOE MUTAMBU, MP	
18.	HON. JUNET SHEIKH, MP	
19.	HON. CECILY MBARIRE, MP	
20.	HON. MARY MBUGUA, HSC, MP	

21.	HON. JOHN MUNUVE, MP	
22.	HON. NDUNG'U GETHENJI, MP	
23.	HON. NICHOLAS NGIKOR, MP	
24.	HON. ONESMUS NJUKI, MP	
25.	HON. RACHEAL AMOLO, MP	
26.	HON. (ENG.) VINCENT MUSAU, MP	
27.	HON. WILLIAM KISANG', MP	
28.	HON. RICHARD TONGI, MP	
29.	HON. MOSES KURIA, MP	

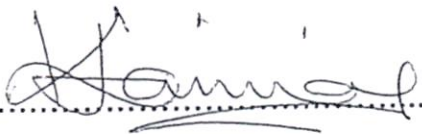
1.5 Acknowledgment

Mr. Speaker, Sir,

The Committee 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 Committee wishes to thank all the stakeholders for their participation in scrutinizing the Bill.

Finally, I wish to express my appreciation to the Honorable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Energy, Communication and Information to present the report on the Energy Bill, 2015 in the House pursuant to Standing Order 127.

Signed  Date 10/11/2015

HON. JAMLECK KAMAU, EGH, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON ENERGY, COMMUNICATION AND
INFORMATION

2.0 BACKGROUND

The Bill seeks to consolidate the laws relating to Energy, align the legal and regulatory framework of the energy sector with the Constitution of Kenya, 2010. It does this by setting out with clarity the specific roles of the National and County Government in relation to energy. The Bill proposes to repeal the Energy Act No. 12 of 2006 and the Geothermal Resources Act No. 12 of 1982 of the Laws of Kenya.

3.0 CONSIDERATION OF THE STAKEHOLDER VIEWS ON THE ENERGY BILL, 2015

The Committee received submissions from the Kenya Private Sector Alliance (KEPSA). They submitted and proposed rafts of Amendments to the Committee as follows:

3.1 The Kenya Private Sector Alliance (KEPSA)

Current section in Bill	Proposed amendment	Rationale and Justification
<p>Section 4 (2): National Energy Policy</p> <p>Within three months after the end of each financial year, the Cabinet Secretary shall prepare and publish a report on the implementation of the national energy policy.</p>	<p>Section 4(2) Within three months after the end of each financial year, the Cabinet Secretary shall prepare and publish a report on the implementation of the national energy policy outlining progress on specific areas and parameters.</p>	<p>A report on specific progress against key parameters will enable implementation on energy reforms to be measured against specific targets set out under the national energy policy such as access to clean energy; functioning of energy markets; interconnection and integration of energy networks.</p>
<p>Section 4 (2): National Energy Policy</p>	<p>Insert additional clause: Section 4(3) "The Report on implementation of the national energy policy shall be published in at least one national newspaper in a form that the Cabinet Secretary shall consider prudent."</p>	<p>Publication of this report in the media will help create awareness and public discourse on key issues.</p>
<p>Section 5 (4): Integrated national energy plan</p> <p>The Cabinet Secretary shall consolidate the plans contemplated in Sub section (2) and (3) into an integrated national energy plan which shall be reviewed regularly.</p>	<p>Section 5(4) "The Cabinet Secretary shall consolidate the plans contemplated in subsection (2) and (3) into an integrated national energy plan which shall be reviewed regularly at least once every three years"</p>	<p>It is recommended to prescribe a timeline for the integrated energy plans contemplated under section 5 (4). This will ensure that specific milestones can be established for review within the specified timeline and at regular rests in line with the national energy policy.</p>
<p>Section 8 (1): Promotion</p>	<p>Section 8 (1) The Cabinet</p>	<p>There is need to make specific provision</p>

<p>of energy investments. The Cabinet Secretary shall develop a conducive environment for the promotion of investments in energy infrastructure development, including formulation of guidelines in collaboration with relevant County agencies on development of energy Projects and to disseminate them among potential investors”</p>	<p>Secretary shall develop a conducive environment for the promotion of investments in energy infrastructure development, including formulation of incentives and guidelines in collaboration with relevant County agencies on development of energy Projects and to disseminate them among potential investors”</p>	<p>for incentives to facilitate Private Sector investment in energy infrastructure.</p>
<p>Section 11: Powers of Authority The Authority shall have all powers necessary or expedient for the performance of its functions under this Act and in particular, the Authority shall have the power to— (l) Impose such sanctions and civil fines, being not less than ten thousand shillings per violation per day to secure compliance with orders issued under this Act.</p>	<p>Section 11 The Authority shall have all powers necessary or expedient for the performance of its functions under this Act and in particular, the Authority shall have the power to— (l) Impose such sanctions and civil fines, being not exceeding ten thousand shillings per violation per day to secure compliance with orders issued under this Act.</p>	<p>The sanctions and civil fines should be geared towards promoting compliance without being unduly punitive.</p>
<p>Section 12 (d): The Director General who shall be the Secretary of the Board</p>	<p>Section 12 (d): The Director General who shall be member of the board with no voting rights</p>	<p>This is in keeping with established good corporate practice</p>
<p>Section 12: Board of the Authority The management of the Authority shall vest in the Board of Directors of the Authority consisting of—</p>	<p>Section 12: The management of the Authority shall vest in the Board of Directors of the Authority consisting of— (e) five other members not being public officers appointed by the Cabinet Secretary to</p>	<p>It is necessary to allow the Private Sector nominate names for appointment by the Cabinet Secretary. This will ensure an inclusive management team that draws in participation from both the Public service and Private Sector</p>

(d) five other members not being public officers appointed by the Cabinet Secretary	represent the Private Sector with experience on energy matters and nominated by the most representative Private Sector body in Kenya.	
Section 55 (b)	Section 55(b) remove reference Ministry of Higher education, science and technology	This will ensure that representation is within recommendation of boards not having not more than 9 members. Ministry responsible for research can undertake the role assigned to the Ministry of Higher Education, Science and Technology
55(z)	Section 55(z) (aa) Carry out relevant energy research through cooperation with any entity, institution or person equipped with the relevant skills and expertise	Takes into recognition that there are other agencies mandated to promote research such as the National Council of Science and Technology. This amendment avoids the potential duplication of roles
57 Board of Directors of Energy and Petroleum Institute	Section 57 (d) not more than five other members, appointed by the cabinet Secretary, three of whom shall be drawn from the Private Sector with experience and expertise on energy matters drawn from the Private Sector and nominated by the most representative Private Sector body in Kenya”	There is no representation from non-public institutions in both the proposed Energy & Petroleum Institute Boards and in the Renewable Energy Resources Advisory Committee. The inclusion of the Private Sector will enhance diversity of knowledge and skills.
Section 60 (3) (b) Holds a degree from a University recognized in Kenya in the fields of engineering, nuclear sciences, law, finance, economics or energy	Section 60 (3) (b) Holds a degree from a University recognized in Kenya in the fields of engineering, nuclear sciences, or energy	This job requires technical capacity as proposed in the revised sub-section
Section 69 (1) (b) & (c) Funds of the Institute 69. (1) The funds of the Institute shall comprise- (b) funds from the Consolidated Energy Fund established under section 243; (c) such funds from the Training Fund established under the law relating to upstream petroleum	Delete Section 69 (1) (b) & (c)	The provisions in Section 69 (1) (b) & (c) will increase the cost of doing business. The Authority should draw its funding from moneys voted by the National Assembly.

Operations as shall be determined by the Cabinet Secretary;		
Section 73 (2): The Cabinet Secretary shall prepare a renewable energy resources inventory and resource map in respect of each renewable energy area and thereafter prepare updates biennially	Section 73 (2): The Cabinet Secretary shall prepare a renewable energy resources inventory and resource map in respect of each renewable energy resource and thereafter prepare updates biennially which shall be disseminated to the public	This will enhance transparency on information of public interest. Remove reference to "area" and focus on energy resource
Section 75 (3): Establishment of Renewable Energy Resource Advisory Committee The Renewable Energy Resource Advisory Committee may co-opt such other members as they deem necessary but in any case not more than four Members shall be co-opted.	Section 75 (3): " The Renewable Energy Resource Advisory Committee shall co-opt at least two members with experience on energy matters from the Private Sector and nominated by the most representative Private Sector body in Kenya"	In view of the functions set out under S. 75, it would be prudent to expand the composition of the committee to include Private Sector representation to reflect the voice of the Private Sector on issues like establishing the "criteria for allocation of renewable energy resource".
Section 78 (4): Cabinet Secretary to authorize search of geothermal resources "An Authority granted under this section shall not be transferable, and shall be in force for a period of one year from the date of issue, but may be renewed for a period of one year from the date of expiry thereof or from the expiration of any renewal".	Section 78 (4): "An Authority granted under this section shall not be transferable, and shall be in force for a period of two years, but may be renewed for such period of time from the date of expiry thereof or from the expiration of any renewal".	The one year period provided for by the Authority to dig a well needs to be extended because it is not sufficient yet it involves significant investment.
Section 84 (5): Royalty " The Cabinet Secretary may, waive, suspend or reduce the royalty for any licensee in the interest of encouraging the greatest utilization of geothermal resources, if the Cabinet Secretary determines that this is necessary to	Section 84 (5) " The Cabinet Secretary may, in consultation with the Renewable Energy Resource Advisory Committee, waive, suspend or reduce the royalty for any licensee in the interest of encouraging the greatest utilization of geothermal resources, if the Cabinet Secretary	The power granted to the Cabinet Secretary under section 84 (5) to "waive, suspend or reduce the royalty for any licence" is open to abuse and could create undue conflict over the payment of royalties.

<p>promote development or that the license cannot be successfully operated under the license terms”</p>	<p>determines that this is necessary to promote development or that the license cannot be successfully operated under the license terms”</p>	
<p>Section 79: Cabinet Secretary may grant a geothermal license</p>	<p>Additional new sub-sections Section 79 (8): “ An applicant aggrieved by a decision of the Tribunal under sub-section (7) shall have a right of appeal to the High Court in accordance with section 37 (3)”</p>	<p>There is need to provide safeguards for an aggrieved applicant’s right to due process which includes the right of appeal to the High Court which has an administrative and judicial oversight over decisions of the Tribunal</p>
<p>Section 93 (2)</p>	<p>No sub-section (a) (b) (c) (d) which is referenced sub-section (3)</p>	<p>Clarity necessary on omitted paragraphs referenced herein</p>
<p>108. Notwithstanding any provision of this Act- (a) emergency works for the construction of a pipeline..... (b) no permit shall be required for the construction of a pipeline within a storage deport, Pipeline facility.....</p>	<p>108. Notwithstanding any provision of this Act- (a) emergency works for the construction of a pipeline..... (b) no permit shall be required for the construction of a pipeline within a storage deport, pipeline facility.... (c) no export, bulk storage or transportation of petroleum crude license, shall be required for a person with whom the National Government has entered into a Petroleum Agreement for the exploration and exploitation of petroleum under the Petroleum(Exploration, Development and Production) Act.</p>	<p>Whereas section 93 requires a person who wishes to undertake refining, importation, export, bulk storage or transportation of petroleum crude or products shall have a valid license issued by the Authority, it fails to take into account the right already granted to Contractors under the Petroleum (Exploration, Development & Production) Act- section 46(2) and indeed inherent in the Model Production Sharing Contract-PSC- (clause 44 and 13(1)). As currently written, the Energy Bill requires that the upstream contractor go through an unnecessary regulatory process with the Energy Regulatory Authority, which would potentially hinder sale/export of petroleum seeing that Energy Regulatory Authority is granted the powers under section 94 to refuse to grant such license- which would embarrass the authority of the Upstream Regulatory Authority as well as Parliament’s ratification process under section 58 (if this process is not varied). Also, section 95 of the Energy Bill includes guiding principles for issuance of such a license which would ordinarily have been demonstrated in the Contractor’s development plans and submissions post declaration of commerciality. In addition, requiring Upstream Contractors to seek the Cabinet’s Secretary’s consent under the Model PSC for purposes of storage, transportation of petroleum produced from upstream as well as from the Energy Regulatory Authority is also a recipe for confusion. In order to prevent unnecessary burden and</p>

		confusion, Upstream Contractors should be free to store, transport sell/export their share of petroleum (beyond their domestic market obligation) based on their storage, transportation, sale/export rights granted in the Petroleum (EDP) Act and the Model PSC.
<p>Section 112 (2): Standards for petroleum products A person who— (a) sells or offers for sale petroleum or petroleum products not conforming to the relevant Kenya Standard or any other standard approved by the Kenya Bureau of Standards; or (b) stores, transports, or sells or offers for sale adulterated petroleum or petroleum products, commits an offence shall on conviction, be liable to a fine of not less than five Million shillings, or to a term of imprisonment of not less than two years, or to both.</p>	<p>“...commits an offence and shall on conviction, be liable to a fine of not less than one million and not exceeding five Million shillings, or to a term of imprisonment of not less than two years, or to both”.</p>	<p>The Bill should provide for a minimum and maximum fine for every designated offence or in the alternative specify a maximum fine. The courts must, in executing sentencing, have discretion to determine the applicable penalty based on the severity and circumstances of each case.</p>
<p>Section 112 (b)</p>	<p>....Delete the word “or”</p>	<p>Typographical error</p>
<p>Section 129 (2): Display of licenses and permits A licensee who contravenes sub section (1) commits an offence and shall on conviction be liable to a fine of not less than five thousandshillings for each day or part thereof that the license or permit is not displayed.</p>	<p>Section 129 (2) “ A licensee who contravenes the provisions of sub-section (1), and who upon demand fails to produce a license or permit within 48 hours, shall be deemed to be operating without a license or permit and shall be liable for such offence as prescribed under this Act”</p>	<p>The failure to display a license or permit cannot amount to a tort that constitutes an offence for every day of default. The offence should be specific to failure to produce a license or permit and the penalty should be de-linked from a cumulating of each day of such failure since this is unduly punitive.</p>
<p>146. A person who carries out any electricity undertaking without a license commits an offence and shall, on conviction, be liable to a fine of not less thanone million shillings, or to a term of imprisonment not less than one year or toboth such fine and</p>	<p>146. A person who carries out any electricity distribution, transmission or generation without a license commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings, or to a term of imprisonment not less than one year or to both such fine and imprisonment.</p>	<p>This provides clarity on the meaning and intent of S. 146 with regard to distribution, transmission or generation of electricity</p>

imprisonment.		
Section 147 (5) The Authority shall, within fifteen days after receipt of the application, inform the applicant in writing whether the application is complete.	Section 147 (5): The Authority shall, within fifteen days after receipt of the application, inform the applicant in writing whether the application is complete and shall process all complete applications for a license within thirty (30) days.	It is necessary to provide and clarify that 30 days is the maximum period within which, an application must be processed which includes confirmation to an applicant whether or not the application is in order. This will enable investors plan appropriately and introduce certainty to the process.
Section 233 (4) Without limiting the generality of subsection (3), the local content plan shall include sub-plans on the following— (a) employment and training; (b) research and development; (c) technology transfer; (d) industrial attachment and apprenticeship; (e) legal services; (f) financial services; and (g) Insurance services.	Without limiting the generality of subsection (3), the local content plan shall include sub-plans on the following— (a) employment and training; (b) research and development; (c) technology transfer; (d) industrial attachment and apprenticeship; (e) legal services; (f) financial services; (g) insurance services; (h) consultancy services; (i) construction services; (j) hospitality services; (k) transport services; (l) security services; (m) clearing and forwarding services; (n) inspection services; and (o) Any other energy sector supply chain development.	It is necessary to cover the broad range of services that are relevant and apply under local content.
Section 243 (2) (b)	Delete this section	Increases the cost of doing business amongst energy players.

3.2 Ministry of Energy and Petroleum

The Ministry of Energy and Petroleum made the following submissions to the Committee:-

That:-

- (1) On Section 4 (2), the report on implementation would outline progress on all key areas, among other aspects, and the KEPSA proposal to add the suggested words adds no value and was therefore rejected. It was also agreed that the CS would be prudent in the choice of how the report is published so as to reach the target audience.

- (2) The Ministry is in agreement with the KEPSA proposal to provide a specific timeframe for review of the integrated energy plan in Section 5 (4).
 - (3) With regard to Section 8 (1), incentives are some of the aspects in a conducive environment. However, we propose to delete section 8 (2) as there are adequate provisions in Part VIII regarding rights of way, wayleaves and use of land for energy resources and infrastructure.
 - (4) On Section 11, it was agreed to deal with penalties and fines as agreed in Petroleum Bill, where in most cases, maximum and not minimum penalties would be specified. However, there are instances where due to the nature of offences that can be classified as economic crimes, including issues of vandalism, minimum penalties may be more appropriate. Revised penalties are set out in paragraph (24) at the end of this submission.
 - (5) The issue of designating officers by the Director of Public Prosecution is handled in Section 243, so it need not be of concern in Section 11.
 - (6) Regarding composition of the Board of Directors of the Authority in Section 12, the concerns of KEPSA are already taken care of, as five of the members shall be persons not in public service, and the experience in energy matters is provided for.
 - (7) On Section 42 there is no duplication as the Renewable Energy Department at the Ministry will be responsible for policy, while implementation is left to the Corporation, which is the case even now as the Rural Electrification Authority is also mandated to promote renewable energy. The name was changed to ensure both aspects of its mandate are reflected so that none is not given due focus.
 - (8) On Section 57, we agreed to reduce the number of Principal Secretaries on the Board of Directors of the Institute to three by combining 57 (b) (ii) and (iii). 57 (d) will be amended to read four other members not being in the public service (and therefore from the private sector) appointed by the CS, similar to Section 12 (1) (e).
 - (9) The Training Fund exists and is provided for in the petroleum agreements under the Petroleum Bill, and so KEPSA amendment of Section 69 is rejected.
 - (10) We have adopted the KEPSA amendment of Section 73 (2) to add dissemination of renewable energy resource inventories to the public.
 - (11) The Advisory Committee proposed in Section 75 is an inter-ministerial Committee and members to be co-opted will depend on the nature and location of the resource under consideration and so KEPSA proposal for two slots is rejected as it will limit the choice of expertise that the Committee may require on a need basis.
-
- (12) Section 78 (4) has sufficient provisions in case any person granted a geothermal exploration licence requires more time by way of renewals.

Giving longer initial periods as proposed by KEPISA will encourage speculators at the expense of more serious investors.

- (13) We are in agreement with the KEPISA proposal to amend Section 84 (5).
- (14) The proposed addition by KEPISA of a new Section 79 (8) is rejected because it is already provide for in Section 37 (4)
- (15) The proposed amendment of Section 108 by adding a new subsection (c) is rejected, because it is a matter for upstream petroleum and is adequately provided for in the Petroleum Bill.
- (16) The KEPISA concerns regarding Section 112 were addressed by deleting products in the side note as well as replacing petroleum or petroleum products with petroleum wherever it occurs in the body of the provisions, in view of the fact that petroleum is defined to include petroleum products.
- (17) We agreed with the KEPISA proposal to amend Section 129 regarding failure to display. However avoid repeating upon demand in the proposed amendment.
- (18) On Section 146, the KEPISA proposal to replace undertaking with distribution and generation is rejected, as this leaves out transmission and supply.
- (19) On Section 147, the KEPISA proposal to merge confirmation of completeness and processing of an application within sixty days is rejected because it is neither practical nor efficient to start processing an application that is not materially complete.
- (20) With regard to the issue of excessive penalties, and in particular, the setting of minimum fines, the Ministry concurs with KEPISA. These have been rationalized in similar manner as was done in the Petroleum Bill and are provide at the end of this submission in paragraph (24).
- (21) On Local content, we are in agreement with the KEPISA proposal to insert other services, other than sub section (o).
- (22) We have also noted an error in 250 where the word unless should be deleted so that the Section reads: *No public body shall charge levies on public energy infrastructure without the consent of the Cabinet Secretary in writing.*
- (23) There has also been a representation by the Constitution Implementation Oversight Committee of the National Assembly with regard to the quality of supply by KPLC and the need to provide for compensation where there are damages to equipment and property. To address this concern, it is proposed to insert a new Section following Section 169 which shall read as follows:

170. (1) Subject to any agreement which may be entered into between a licensee and a consumer as provided for under this Act, whenever the licensee makes default in supplying electrical energy to any consumer, the licensee shall be liable in respect of each default to a penalty as prescribed by regulations in that behalf.

(2) The licensee shall be liable to pay compensation to any person who incurs damage to his or her property, injury or loss of life, due to failure, poor quality or irregularity of electricity supply as a result of negligence or avoidable default by the licensee.

(3) For avoidance of doubt, the licensee shall not be liable to pay any compensation pursuant to subsection (2) if the failure, poor quality or irregularity of the supply was caused by third party interference of the licensee's electric supply lines or inevitable accident or *force majeure* or was of so slight or unimportant character as not to materially affect the quality or value of the supply.

(4) The Cabinet Secretary shall upon recommendation by the Authority make regulations to give effect to the provisions of this section.

(24) Schedule of Penalties and Fines.

Section	Offence	Current Penalty	Revised Penalty
11 (1)	power of the Authority to impose sanctions and civil fines for violations	not less than ten thousand per violation per day	not exceeding one hundred thousand shillings per violation per day for a maximum of thirty days
22 (5)	person who, unless authorized, opens, breaks, alters or in any way interferes with a lock, seal, mark or other fastening, etc	not less than five hundred thousand shillings or to a prison term of not less than six months or both	not exceeding one million shillings or to a prison term of not exceeding two years or both
22 (6)	person who resists, hinders or obstructs any committee, officer, employee or agent, etc	not less than five hundred thousand shillings or to a prison term of not less than six months or both	not exceeding one hundred thousand shillings for each day or part thereof that the obstruction occurs

Section	Offence	Current Penalty	Revised Penalty
89 (1)	intends to drill or drills any well, extracts, takes, uses or applies geothermal resources for commercial or industrial purposes in contravention of this Act	not less than one million shillings and if the offence is of a continuing nature, to a further fine of not less than one hundred thousand shillings for every day or part of a day during which that offence continues	not exceeding ten million shillings and if the offence is of a continuing nature, to a further fine not exceeding one hundred thousand shillings for every day or part of a day, up to a maximum of thirty days, during which that offence continues
89 (2)	removes, damages, destroys or otherwise interferes with any survey pegs or beacons placed on the ground	not less than five hundred thousand shillings and if the offence is of a continuing nature, to a further fine of not less than fifty thousand for every day or part of a day during which that offence continues or a jail term of not less than six months	not exceeding one million shillings and if the offence is of a continuing nature, to a further fine not exceeding one hundred thousand shillings for every day or part of a day, up to a maximum of thirty days, during which that offence continues, or to a jail term not exceeding twelve months or both
89 (3)	removes, damages, destroys or otherwise interferes with any valve or instrument	not less than five hundred thousand shillings and if the offence is of a continuing nature, to a further fine of not less than one million shillings or a jail term of not less than twelve months or both	not exceeding one million shillings and if the offence is of a continuing nature, to a further fine not exceeding one hundred thousand shillings for every day or part of a day, up to a maximum of thirty days, during which that offence continues, or to a jail term not exceeding twelve months or both
93 (3), 119,120, 122, 143, 146, 186, 195, 196	Various offences, including attempted offences, carrying undertakings without licenses and permits	Minimum fines and jail terms	Leave provisions as are drafted in the Bill, being economic crimes
97			Rearrange subsections for logical flow.

Section	Offence	Current Penalty	Revised Penalty
100 (2)	failure to display licence or permit	not less than ten thousand shillings for each day or part thereof that the licence or permit is not displayed	not exceeding one million shillings
111 (3)	constructs a pipeline, refinery, bulk storage facility, retail dispensing site or a centralized gas reticulation system without a permit	not less than one million shillings	Leave provision as is in the Bill, as these are economic crimes
112 (2)	(a) sells or offers for sale petroleum not conforming to the relevant Kenya Standard; or (b) stores, transports, or sells or offers for sale adulterated petroleum	Minimum fines and jail terms	Leave provisions as are drafted in the Bill, being economic crimes
129	failure to display licence or permit	not less than five thousand shillings for each day or part thereof that the licence or permit is not displayed	not exceeding one million shillings
138 (3)	constructs a coal value addition facility and a bulk coal storage facility without a permit	not less than one million shillings	Leave provision as is in the Bill, as these are economic crimes
153 (7)	obstructing or causing obstruction to the statutory manager or a person authorized by the statutory manager in the execution of the duties, etc	not less than one hundred thousand shillings for each day or part thereof during which the offence continues	not exceeding one hundred thousand shillings for each day or part thereof that the obstruction occurs
158 (4)	person who refuses to allow an inspection under subsection (1)	not less than twenty five thousand shillings for each day or part thereof that the obstruction occurs or continues	not exceeding fifty thousand shillings for each day or part thereof that the obstruction occurs or continues

Section	Offence	Current Penalty	Revised Penalty
183 (3)	Where any seal or other apparatus affixed under subsections (1) or (2) is broken or tampered with without the authority of the licensee	not less than two hundred thousand shillings or to a term of imprisonment of not less than one year or to both	not less than the value the direct financial loss to the licensee arising from breakage or tampering or to a term of imprisonment of not less than one year or to both
212	hinders, obstructs or interferes with the exercise by a licensee with regard to an energy infrastructure, or by the servants or agents duly authorized in writing of any such licensee, of any right of entry upon land conferred by this Act for the purpose of laying and connecting, or repairing, inspecting or removing, an energy infrastructure	not less than fifty thousand shillings for each day or part thereof that the obstruction occurs or continues	not exceeding five hundred thousand shillings for each day or part thereof that the hindrance or obstruction occurs
215 (3)	An owner of the designated factory or building who does not comply within thirty days from the date of receipt of such instruction given under subsection (2)	not less than two hundred and fifty thousand shillings, or to a term of imprisonment of not less than nine months, or to both	not exceeding one million shillings or to a prison term of not exceeding two years or both
215 (5)	The owner of a designated factory who fails to keep records of information required under regulations under this Act at the designated factory for a minimum of five years	not less than two hundred and fifty thousand shillings, or to a term of imprisonment of not less than nine months, or to both	not exceeding one million shillings or to a prison term of not exceeding two years or both
216 (2)	an owner who fails to conserve energy, audit and analyze energy consumption in his building	not less than one hundred thousand shillings, or to a term of imprisonment of not less than six months, or to both	not exceeding five hundred thousand shillings or to a prison term of not exceeding two years or both

Section	Offence	Current Penalty	Revised Penalty
237	a person who makes a false statement or a statement which he has reason to believe is untrue, to the Cabinet Secretary, or to the Authority, committee, agent or an officer acting on behalf of the Authority	not less than one hundred thousand shillings or to a term of imprisonment of not less than six months or to both	not exceeding ten million shillings or to a prison term of not exceeding five years or both
248	offence for which no fine or penalty is expressly stated	not less than one million shillings	not exceeding ten million shillings

COMMITTEE OBSERVATIONS

- a. The Committee observed that some proposals for amendment of the Bill from the stakeholders were proper as they sought to improve the current version of the Bill. However, it is worth noting that proposed amendments from the stakeholders were varied as their proposals sought to cater for their divergent interests. The Committee will therefore at a later stage introduce amendments to the Bill for consideration during the Committee Stage.
- b. The Committee further observed that the proposed Bill is one that concerns County Governments within the meaning of Article 110 of the Constitution and is therefore an ordinary Bill.

5.0 COMMITTEE RECOMMENDATIONS

In view of the above proposals from the stakeholders and the Ministry of Energy and Petroleum; the Committee is preparing amendments to the Bill that it will table before the House at a later date upon further clarifications and consultations with the stakeholders and the Ministry of Energy and Petroleum.

