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REPUBLIC OF KENYA

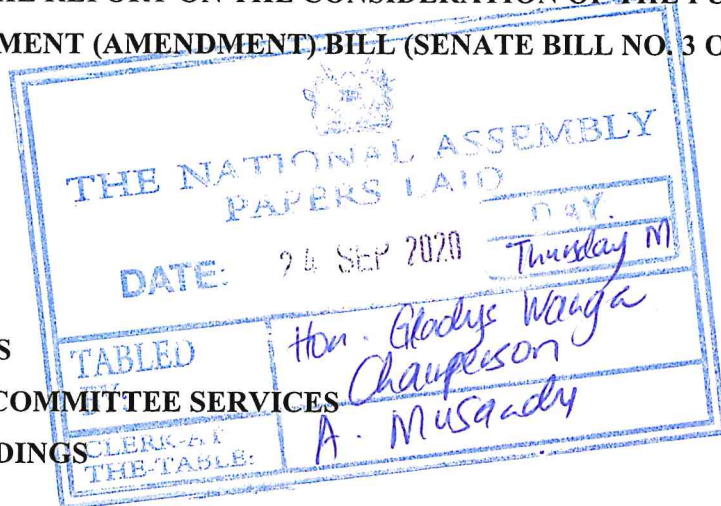


THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FOURTH SESSION – 2020

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

ADDENDUM TO THE REPORT ON THE CONSIDERATION OF THE PUBLIC FINANCE
MANAGEMENT (AMENDMENT) BILL (SENATE BILL NO. 3 OF 2019)



CLERKS CHAMBERS

DIRECTORATE OF COMMITTEE SERVICES

PARLIAMENT BUILDINGS

NAIROBI

SEPTEMBER, 2020

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CHAIRPERSON'S FORWARD

This report contains the deliberations of the Departmental Committee on Finance and National Planning during its consideration of further amendments to the Public Finance Management (Amendment) Bill (Senate Bill No. 3 of 2019).

As you are aware the Bill was published on **15th April, 2019** and passed by the Senate with amendments on **23rd October, 2019**. The Bill was subsequently received from the Senate on 12th November, 2020 vide a message from the Speaker of the Senate. The Bill then went through the First Reading on **13th November, 2019**. The Committee proceeded to consider the Bill pursuant to Standing Order 127 and tabled its report on 17th March, 2020 with several amendments proposed by the Committee.

The Second Reading of the Bill was concluded on 17th September, 2020 and while this was ongoing the Committee received a memorandum seeking to provide a PFM framework on disbursement of funds in case of transferred functions. The Committee went ahead to consider the memorandum on 22nd September, 2020. The Committee was of the view that the amendments were necessary to provide for a smooth and effective funding of transferred functions and enable the entities have a form of financial liberty for effective service delivery.

The Committee thanks the Offices of the Speaker and the Clerk of the National Assembly for the technical support extended to it in the process of considering the Bill. In addition, I thank Members of the Committee and the Secretariat for their sacrifice and commitment in considering these further amendments to the Public Finance Management (Amendment) Bill (Senate Bill No.3 of 2019)

Hon. Gladys Wanga, CBS, MP
Chairperson, Departmental Committee on Finance and National Planning

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly 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 their implementation;
 - iii. **To study and review all the legislation referred to it;**
 - iv. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - v. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - 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 No. 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 recommendation 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.

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and departments;
 - a. National Treasury and Planning
 - b. Ministry of Devolution
 - c. Commission on Revenue Allocation
 - d. Office of the Controller of Budget
 - e. Salaries and Remuneration Commission

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was reconstituted by the House in on Wednesday, 15th July, 2020 and comprises of the following Members:-

Hon. Gladys Wanga, CBS, MP (**Chairperson**)
MP for Homabay County
ODM Party

Hon. Isaac W. Ndirangu (**Vice-Chairperson**)
MP for Roysambu Constituency
Jubilee Party

Hon. Jimmy O. Angwenyi, MGH, MP
MP for Kitutu Chache North Constituency
Jubilee Party

Hon. Joshua Chepyegon Kandie, MP
MP for Baringo Central Constituency
MCC Party

Hon. Christopher Omulele, MP
MP for Luanda Constituency
ODM Party

Hon. Stanley Muiruri Muthama, MP
MP for Lamu West Constituency
Jubilee Party

Hon. Shakeel Shabbir Ahmed, CBS, MP
MP for Kisumu Town East Constituency
Independent Member

Hon. Edith Nyenze, MP
MP for Kitui West Constituency
WDM-K

Hon. Daniel Epuyo Nanok, MP
MP for Turkana West Constituency
Jubilee Party

Hon. Catherine Waruguru, MP
MP for Laikipia County
Jubilee Party

Hon. (Dr.) Christine Ombaka, MP
MP for Siaya County
ODM Party

Hon. James Gichuhi Mwangi, MP
MP for Tetu Constituency
Jubilee Party

Hon. Andrew Adipo Okuome, MP
MP for Karachuonyo Constituency
ODM Party

Hon. (Prof.) Mohamud S. Mohamed, MP
MP for wajir South Constituency
Jubilee Party

Hon. David Mwalika Mboni, MP
MP for Kitui Rural Constituency
CCU Party

Hon. Peter Lochakapong, MP
MP for Sigor Constituency
Jubilee Party

Hon. Francis Kuria Kimani, MP
MP for Molo Constituency
Jubilee Party

Hon. Qalicha Gufu Wario, MP
MP for Moyale Constituency
Jubilee Party

Hon. Joseph Maero Oyula, MP
MP Butula Constituency
ODM Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Secretariat:-

Ms. Leah W. Mwaura
Senior Clerk Assistant/Head of the Secretariat

Ms. Jennifer Ndeto
Principal Legal Counsel I

Ms. Laureen Wesonga
Clerk Assistant II

Mr. Joseph Okong'o
Senior Media Relations Officer

Mr. Josephat Motonu
Fiscal Analyst I

Mr. Chelang'a Maiyo
Research Officer II

Mr. John Njoro
Serjeant-At-Arms

Ms. Euridice Nzioka
Audio Officer

Mr. Vitalis Augo
Office Assistant

2 THE ADDITIONAL AMENDMENTS TO THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (SENATE BILL NO.3 OF 2019)

2.1 Introduction

6. The Public Finance Management (Amendment) Bill (Senate Bill No. 3 of 2019) *hereinafter referred to as the Bill* went through the various stages of reading of a Bill with Second Reading of the Bill being concluded on 17th September, 2020. The Bill is developed in line with Section 12 (e) which mandates the National Treasury to design and prescribe an efficient financial management system for the national and county governments to ensure transparent financial management and standard financial reporting as contemplated by Article 226 of the Constitution. The revenue collection system will eliminate revenue leakages at the counties occasioned by lack of a reliable revenue system.
7. The main thrust of the Bill is therefore to amend the Public Finance Management Act, No. 8 of 2012 to ensure that a county government revenue collection system is developed by the Cabinet Secretary of National Treasury in consultation with the Council of Governors, Commission on Revenue Allocation and Kenya Revenue Authority and implemented by county treasuries. The system once developed will have certain features that will ensure Own source revenue collection is transparent, accountable and simple and easy to report.

2.2 Public Participation

8. The Committee received a memorandum from Mr. Kokebe Kevin of ID No. 27807985 dated 2nd March, 2020 who requested the Committee to make further amendments to the Bill so as to provide a framework for effective disbursement of funds in case of transferred functions. Upon examination of the memorandum, the Committee noted that the PFM Act, 2012 does not provide the framework for this effective disbursement of funds for effective service delivery of transferred functions.
9. It is for this reason therefore, in addition to coming up with a revenue collection system there is need to provide through the PFM framework an effective mechanism to give effect to provisions of Article 187 (2) (a) which states that if a function or power is transferred from a government at one level to a government at the other level- arrangements shall be put in place to ensure that resources necessary for the performance of the function or exercise of the power are transferred.
10. The transfer of functions of the government of Nairobi City County to the Nairobi Metropolitan Services has been a classic case whereby the funds received as share of equitable revenue to the county are deposited in the county revenue fund with the withdrawal authorization powers being vested on the County Executive Committee Member for Finance. In case of the transferred the release of these funds with heavily rely on the good will of the CEC and he or she may use this goodwill to undermine service delivery on the transferred functions.
11. These inefficiencies have been brought about by the lack of clear framework in the Public Finance Management Act 2012 in management of public finances in relation to transferred functions as envisaged under Article 187 of the Constitution of Kenya which inadequacy hinder effective service delivery.

4 COMMITTEE RECOMMENDATION

12. The Committee having considered the Memorandum wishes to submit further amendments to the Public Finance Management Amendment Bill (Senate Bill No. 3 of 2019) and requests the House to agree with the Committee on the Amendments as further proposed.

5 SCHEDULE OF PROPOSED AMENDMENTS

The Committees proposed the following amendments to be considered by the House in the Committee stage:

CLAUSE 2

13. **THAT**, clause 2 of the Senate amendments be amended—

(a) in the proposed new section 160A —

(i) by inserting the words “within one year from the coming into force of this Act.”, immediately after the words “collection system” in sub-section (1);

Justification

14. This is to give timelines for the development of the county revenue collection system.

(ii) by inserting the following new subsection immediately after subsection (1) —

(1a) The county revenue collection system shall —

(a) be transparent, efficient, effective and verifiable;

(b) be simple and easy to use;

(c) be easy manage and control to ensure accountability;

(d) be adequately secure to prevent and fraud, losses or any other violations;

(e) respect and promote the distinctiveness of national government and the county government; and

(f) provide for separate accounting and reporting.

Justification

15. The responsibility to develop the county revenue collection system lies with the Institutions listed in sub-clause (1) and not with the county executive member.

(iii) by inserting the words “within one year and” immediately after the expression “sub-section (1)” in sub-section (2);

Justification

16. This is to give timelines for the implementation of the county revenue collection system.

(iv) by deleting sub-section (3).

Justification

17. The responsibility to develop the county revenue collection system does not lie with the county executive member but with the institutions listed in sub-clause (1).

(b) in the proposed new section 160B—

(i) by deleting the words “submit bi-annual statements and an annual report” appearing in sub-section (1) and substituting therefor the words “submit quarterly statements and a quarterly report”;

(ii) by deleting the words “copies of the bi-annual statements and an annual report” appearing in sub-section (2) and substituting therefor the words “copies of the quarterly statements and quarterly report”;

- (iii) by deleting the words “the bi-annual statements and the annual report” appearing in sub-section (3) and substituting therefor the words “the quarterly statements and the quarterly report”;

Justification

18. This is to enhance oversight of revenue collection by the county assemblies.

- (c) by deleting the proposed section 160C and substituting therefor the following new section—
160C. The National Treasury may, on the recommendation of the Senate, and pursuant to Article 225(3) of the Constitution, stop the transfer of a county’s share of revenue raised by the national government, if the County Treasury fails to—

- (a) implement a county revenue collection system; or
- (b) report on the status of the county revenue collection and performance, as required under this Act.

Justification

19. The county treasury is only charged with the responsibility to implement the county revenue collection system and not to develop it.

- (d) by inserting the following new section immediately after the proposed section 160C—

Funds for functions transferred between levels of government. **160D.** (1) Where a level of government transfers a function to another level of government in accordance with Article 187 of the Constitution—

- (a) the level of government transferring the function shall allocate adequate funds for the duration of the transfer to enable the other level of government to perform the function;
- (b) the budget for each function transferred shall be a separate vote;
- (c) the Treasury of the level of government to which a function is transferred shall stand authorized to withdraw any funds budgeted for the function from the Consolidated Fund or the County Revenue Fund, as the case may be, with the prior written approval of the Controller of Budget.

(2) The approval of the Controller of Budget to withdraw money from the Consolidated Fund or the County Revenue Fund, together with written instructions from the Treasury of the level of government to which a function has been transferred shall be sufficient authority for—

- (a) the Central Bank of Kenya to pay amounts from the National Exchequer Account in accordance with the approval and instructions provided; or

- (b) the approved bank where the County Exchequer Account is held to pay amounts from the account in accordance with the approval and the instructions.

Justification

20. The amendment seeks to provide a framework for the allocation, appropriation and disbursement of funds for functions transferred between levels of government and also provide for the authorization of the withdrawal of budgeted funds from the Consolidated Fund as the case may be with the prior written approval of the Controller of Budget and to provide that the aforementioned approval shall be sufficient authority to disburse the monies from the National Exchequer Account by the Central Bank of Kenya and/or the approved bank.

SIGNED.......... DATE..... 24/9/2020

HON. GLADYS WANGA, CBS, MP

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

12

MINUTES OF THE 49TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING ON TUESDAY, 22ND SEPTEMBER, 2020 AT 10.00 AM

PRESENT

1. Hon. Gladys Wanga, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, MP
5. Hon. Shakeel Shabbir Ahmed, CBS, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. (Dr.) Christine Ombaka, MP
8. Hon. David M. Mboni, MP
9. Hon. Joseph M. Oyula, MP
10. Hon. Joshua C. Kandie, MP
11. Hon. Edith Nyenze, MP
12. Hon. Catherine Waruguru, MP
13. Hon. James Gichuhi Mwangi, MP
14. Hon. Peter Lochakapong, MP

ABSENT WITH APOLOGY

1. Hon. Andrew A. Okuome, MP
2. Hon. Francis K. Kimani, MP
3. Hon. Stanley M. Muthama, MP
4. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
5. Hon. Qalicha Gufu Wario, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of the Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Mr. John Njoro - Serjeant-At-Arms
5. Ms. Euridice Nzioka - Audio Officer
6. Mr. Vitalis Augo - Office Assistant

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Consideration the President's Memorandum on the Parliamentary Pensions (Amendment) Bill (N.A. Bill No. 45 of 2019)**
6. **Consideration of further amendments to the Public Finance Management (Amendment) Bill (Senate Bill No. 3 of 2019)**
7. Adjournment/Date of the next meeting

MIN.NO.NA/F&NP/2020/230: COMMUNICATION FROM CHAIRPERSON

The meeting was called to order at 10.23 a.m. and a prayer was said. The Chairperson then invited the Legal Counsel to brief the Committee about the President's Memorandum on the Parliamentary Pensions (Amendment) Bill, 2019.

MIN.NO.NA/F&NP/2020/231: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2020/232: CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL (N.A. BILL NO. 45 OF 2020)

The Committee was taken through H.E. the President's Reservations to the Parliamentary Pensions (Amendment) Bill (N.A. Bill No. 45 of 2019). The Committee was informed that H.E. the President had declined to assent to the Bill because of the following reasons:-

1. Members pensions under the Act are calculated according to the contributions paid into the Scheme during their parliamentary term. The proposed amendment fails to provide for such calculation and makes no reference to the Members' contributions;
2. The Bill overlooks the mandate of the Salaries and Remuneration Commission under the Constitution, which comprises, among other things, the setting and review of remuneration and benefits for all state officers who include Members of Parliament; and,
3. The proposed pension payment will result in an annual cost implication of about four hundred and forty-four (444) million shillings. Added to this, will be the almost certain demand for similar upward review of pension benefits by other retired state and public officers, which is within their rights to demand. The resultant ripple effect is unaffordable and fiscally unsustainable.

Members deliberated extensively on the Memorandum and resolved to agree with the President's Reservations because it failed to take into account of the following factors:-

1. inflation and high cost of living in the country which makes it impossible for the former Members of Parliament to survive on the pensions that they are earning currently; and
2. difficulties that former Members of Parliament experience after their service in terms of securing employment unlike other government employees.

The Committee adopted the report on the consideration of the President's Memorandum on the Parliamentary Pensions (Amendment) Bill (N.A. Bill No. 45 of 2019) having been proposed and seconded by Hon. Jimmy Angwenyi, MGH, MP and Hon. Edith Nyenze, MP respectively.

MIN.NO.NA/F&NP/2020/233: CONSIDERATION OF FURTHER AMENDMENTS TO THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (SENATE BILL NO. 3 OF 2019)

The Chairperson informed the Committee that Mr. Kevin Kokebe had submitted a Petition proposing additional amendments to the Public Finance Management (Amendment) Bill (Senate Bill No. 3 of 2019) to the Committee for consideration. The amendments proposed that clause 2 of the Bill should be amended in order to provide for funding of functions transferred between the National and county governments.

The Committee deliberated on the Petition and directed the Committee Secretariat to draft the amendments as proposed in the Petition so that they are part of the Committee's amendments which will be considered in the Committee of the Whole House.

MIN.NO.NA/F&NP/2020/234: ANY OTHER BUSINESS

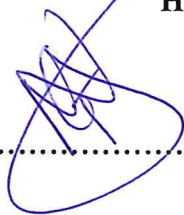
The Chairperson informed Members that they will be picked by Kenya Revenue Authority buses at 8.30 a.m. for the site visits at Kenya Revenue Authority (KRA) Offices, Times Tower; Jomo Kenyatta International Airport (JKIA); and Inland Container Deport (ICD) scheduled to take place the following day.

MIN.NO.NA/F&NP/2020/235: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 11.26 a.m. The next meeting will be held on Tuesday, 29th September, 2020 at 10.00 am.

**HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)**

SIGNED.....DATE.....



24/9/2020

