

Approved for tabling.

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27/6/19

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION – 2019

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT ON
THE CONSIDERATION OF H.E. THE PRESIDENT'S RESERVATIONS ON
THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL
(NATIONAL ASSEMBLY BILL NO. 21 OF 2019)

CLERK'S CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI


 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 27 JUN 2019	DAY: Thursday
BY: Hta. Peris Tobiko Member, Transport Committee	
CLERK-AT-THE-TABLE: Lemuna Mosey	JUNE 2019

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CHAIRPERSON'S FOREWARD

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019) was passed by the National Assembly on Thursday, 13th June 2019. Vide a Presidential Memorandum dated 18th June 2019 and in accordance with Article 115(1) (b), H.E the President referred the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019) back to Parliament for reconsideration. The President's reservations were subsequently submitted to the Committee on 20th June 2019 for consideration in line with the provisions of the Constitution and the Standing Orders.

The Committee thanks the Office of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the process of considering the President's reservations to the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019).

The Chairperson further thanks all the Members of the Committee and the secretariat for their sacrifice and commitment in considering the President's reservations to the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019).

Hon. Speaker, it is now my pleasant duty and privilege to present and commend this report of the Departmental Committee on Transport, Public Works and Housing for consideration and approval by the House pursuant to Article 115 of the Constitution.

HON. DAVID PKOSING, CBS, MP

(CHAIRPERSON)

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Transport, Public Works and Housing is one of the fifteen Departmental Committees of the National Assembly established under Standing Order 216 whose mandate pursuant to the Standing Order 216 (5) is 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 matters relating to the following subjects:-
 - a) Transport;
 - b) Roads;
 - c) Public works;

- d) Construction and maintenance of roads, rails and buildings;
- e) Air and seaports; and
- f) Housing.

3. In executing its mandate, the Committee oversees the following State departments;
- a) The State Department of Transport;
 - b) The State Department of Infrastructure;
 - c) The State Department of Housing and Urban Development;
 - d) The State Department of Public Works; and
 - e) The State Department of Shipping and Maritime Affairs.

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Transport, Public Works and Housing was constituted by the House in December, 2017 and comprises of the following Members:-

	Names	Party	Constituency
1.	Hon. David Pkosing (Chairman)	Jubilee	Pokot South
2.	Hon. Moses Kuria (Vice Chair)	Jubilee	Gatundu South
3.	Hon. Dominic Kipkoech Koskei	Jubilee	Sotik
4.	Hon. Peris Pesi Tobiko	Jubilee	Kajiado East
5.	Hon. Kulow Maalim Hassan	EFP	Banissa
6.	Hon. Mugambi Murwithania Rindikiri	Jubilee	Buuri
7.	Hon. Samuel Arama	Jubilee	Nakuru Town West
8.	Hon. Shadrack John Mose	Jubilee	Kitutu Masaba
9.	Hon. Rigathi Gachagua	Jubilee	Mathira
10.	Hon. Rehema Dida Jaldesa	Jubilee	Isiolo
11.	Hon. Ahmed Bashane Gaal	PDP	Tarbaj
12.	Hon. David Njuguna Kiaraho	Jubilee	Oi Kalou
13.	Hon. Johnson Many Naicca	ODM	Mumias West
14.	Hon. Tom Mboya Odege	ODM	Nyatike
15.	Hon. Suleiman Dori Ramadhani	ODM	Msambweni
16.	Hon. Ahmed Abdisalan Ibrahim	ODM	Wajir North
17.	Hon. Gideon Mutemi Mulyungi	WDP	Mwingi Central

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| 18. | Hon. Savula Ayub Angatia | ANC | Lugari |
| 19. | Hon. Vincent Kemosi Mogaka | Ford K | West Mugirango |

1.4 COMMITTEE SECRETARIAT

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

- | | | |
|----|--------------------------|--------------------------------|
| 1. | Ms. Chelagat Tungo Aaron | Clerk Assistant I |
| 2. | Mr. Ahmed Salim Abdalla | Clerk Assistant III |
| 3. | Ms. Mercy Wanyonyi | Legal Counsel I |
| 4. | Mr. James Muguna | Research Officer III |
| 5. | Mr. Abdinasir Moge Yusuf | Fiscal Analyst I |
| 6. | Ms. Zainabu Wario | Sergeant at Arms |
| 7. | Ms. Noelle Chelangat | Media Relations Officer |
| 8. | Mr. Collins Mahamba | Audio Officer |

2 PRESIDENT'S RESERVATIONS TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL 2019

6. The National Assembly passed the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019) in June 13, 2019 and thereafter, the Bill was presented for Assent to H.E. the President in accordance with the provisions of the Constitution and our Standing Orders.
7. However, in exercise of the powers under Article 115(1)(b) of the Constitution, H.E. the President, by way of a Memorandum dated June 18, 2019, referred the said Bill back to the National Assembly for reconsideration.
8. Consequently, the Speaker vide a communication dated Thursday, 20th June, 2019 conveyed the President's Memorandum on the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019).
9. In his communication, the Hon. Speaker explained that whereas Standing Order 154 requires the National Assembly to consider the President's reservations within 21 days, the Departmental Committee on Transport, Public Works and Housing to which the Bill was committed for consideration should prioritize the matter and table its report by Thursday, June 27, 2019, to enable the House conclude with the Bill in good time, ahead of the short July recess. The Speaker further encouraged Members of the National Assembly wishing to give their views and comments to appear before the Committee during the period of reconsideration by the Committee. In this regard, the Committee did not receive any views or comments from other Members of the National Assembly.
10. In his Memorandum, H.E. the President expressed reservations on the provisions relating to the Merchant Shipping Act, 2009 as passed by the House. In his reservations, the President is agreeable with the principle of the Committee and the House regarding limiting the powers of the Cabinet Secretary and specificity of the exemption hence the deletion of the new section 4A. However, the President had reservations on the amendment to section 16 with the limitation on "whole ownership". The President was of the view that this restriction will disadvantage the Kenya National Shipping Line whose majority shareholding is held by the Government, through the Kenya Ports Authority.

11. H.E the President therefore proposed to delete the proposed new subsection 16(1A) as passed and to introduce a caveat that provisions of section 16(1) (providing for ship ownership) shall not apply to a shipping line owned or controlled by the Government of Kenya. He was of the view that, this in effect, will assist the Kenya National Shipping Line in collaborating with other partners, as is the international practice, to enhance its competitiveness in the regional and global shipping markets.

3 COMMITTEE CONSIDERATION OF THE PRESIDENT'S RESERVATIONS TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL 2019

12. The Committee held meetings on 25th June 2019 and on 26th June 2019 to deliberate on the President's reservations to the Statute Law (Miscellaneous Amendments) Bill 2019. The Committee adopted this report in its sitting held on 26th June 2019.
13. The Committee considered the President's memorandum and reservations on the proposed amendment to the Merchant Shipping Act, 2009 as contained in the the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019). The Committee noted that the President's proposal as contained in his memorandum dated 18th June 2019 was, in principle, in line with what the Committee earlier proposed to the House in its report tabled on 6th June 2019.
14. The Committee noted that in its report dated 6th June,2019 it had proposed the following amendments to the Merchant Shipping Act, No.4 of 2009

SCHEDULE

THAT the Schedule to the Bill be amended in the provisions relating to the Merchant Shipping Act, No.4 of 2009, by—

- (a) deleting the proposed new section 4A; and*
- (b) inserting the following new amendment in its proper numerical sequence—*

s.16(1) Insert the following new subsection immediately after subsection (1)-

“(1A) The provisions of subsection (1) shall not apply to the Kenya National Shipping Line.”

15. The Committee further noted that on Wednesday, June 12th 2019, the National Assembly during the Committee of the Whole House passed the following amendments to the Merchant Shipping Act, No.4 of 2009 –

SCHEDULE

THAT the Schedule to the Bill be amended in the provisions relating to the Merchant Shipping Act, No.4 of 2009, by—

(a) deleting the proposed new section 4A; and

(b) inserting the following new amendment in its proper numerical sequence—

s.16(1) *Insert the following new subsection immediately after subsection (1)-*

“(1A) The provisions of subsection (1) shall not apply to a shipping line wholly owned by the government”

16. The Committee observed that the President in his memorandum had proposed the following amendment to the Merchant Shipping Act, No.4 of 2009, —

SCHEDULE

THAT the Schedule to the Bill be amended in the provisions relating to the Merchant Shipping Act, No.4 of 2009, by inserting the following new amendment in its proper numerical sequence—

s.16(1) *Insert the following new subsection immediately after subsection (1)-*

“(1A) The provisions of subsection (1) shall not apply to a shipping line owned or controlled by the government”

17. In considering the proposed amendment by the President, the Committee was of the view that the proposed amendment was critical in ensuring that the Kenya National Shipping Line gets the benefits of exemption from the provisions of section 16 of Merchant Shipping Act, No.4 of 2009 that were sought to be conferred through the amendment. The Committee further, in agreeing with the President, noted that the practice of countries seeking to establish national shipping lines in partnership with other agencies is a global exercise which enables government agencies to

collaborate with partners who have already established, tried and tested shipping route networks and thereby enhance their competitiveness in the global and regional shipping markets.

18. The Committee sought to understand what the terms 'owned' or 'controlled' by the government meant, as used in the President's proposal. The Committee was of the view that the terms as used seek to ensure that the government has a controlling interest in a shipping line. The Committee further noted that the current shareholding in the Kenya National Shipping Line by the government, through the Kenya Ports Authority is at 53% and therefore the Kenya National Shipping Line will qualify for the exemption sought.

4 COMMITTEE RECOMMENDATIONS

19. The Committee having considered the President's reservations to the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019) and pursuant to Article 115 of the Constitution, recommends as follows—

THAT the National Assembly fully agrees with President's proposal to amend section 16(1) of the Merchant Shipping Act, No.4 of 2009 as follows—

SCHEDULE

THAT the Schedule to the Bill be amended in the provisions relating to the Merchant Shipping Act, No.4 of 2009, by inserting the following new amendment in its proper numerical sequence—

s.16(1) Insert the following new subsection immediately after subsection (1)-
“(1A) The provisions of subsection (1) shall not apply to a shipping line owned or controlled by the government”.

SIGNED.......... DATE..... 27TH JUNE 2019.....

THE HON. MOSES KURIA, MP

VICE CHAIRPERSON

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING