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ELEVENTH PARLIAMENT – SECOND SESSION

REPORT OF THE DEPARTMENTAL COMMITTEE
ON
FINANCE, PLANNING & TRADE ON THE CONSIDERATION OF
THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2014

PARLIAMENT BUILDINGS
NAIROBI

24TH APRIL, 2014



PREFACE

Mr. Speaker, Sir

The Committee on Finance, planning & Trade is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to, inter alia; 'to study and review all legislations referred to it'.

Mr. Speaker, Sir

The Committee on Finance, Planning & Trade was constituted by the House on Thursday 16th May, 2013 comprising of the following members:

1. The Hon. Benjamin Langat, MP (Chairman)
2. The Hon. Nelson Gaichuhie, MP (vice Chairman)
3. The Hon. Jones M Mlolwa, MP
4. The Hon. Anyanga, Andrew Toboso, MP
5. The Hon. Timothy M .E. Bosire, MP
6. The Hon. Ahmed Shakeel Shabbir Ahmed, MP
7. The Hon. Joash Olum, MP
8. The Hon. Dr. Oburu Oginga, MP
9. The Hon. Patrick Makau King'ola, MP
10. The Hon. Abdullswamad Sheriff, MP
11. The Hon. Sumra Irshadali, MP
12. The Hon. Ogendo Rose Nyamunga, MP
13. The Hon. Iringo Cyprian Kubai, MP
14. The Hon. Dennis Waweru, MP
15. The Hon. Tiras N. Ngahu, MP
16. The Hon. Sakaja Johnson, MP
17. The Hon. Jimmy Nuru Angwenyi, MP
18. The Hon. Ronald Tonui, MP
19. The Hon. Mary Emase, MP
20. The Hon. Joseph Limo, MP
21. The Hon. Lati Lelelit, MP
22. The Hon. Kirwa Stephen Bitok, MP
23. The Hon. Sammy Mwaita, MP
24. The Hon. Daniel E. Nanok, MP
25. The Hon. Eng. Shadrack Manga, MP
26. The Hon. Abdul Rahim Dawood, MP
27. The Hon. Sakwa John Bunyasi, MP
28. The Hon. Alfred W. Sambu, MP
29. The Hon. Sammy Koech, MP

Mr. Speaker, Sir,

On 2nd April, 2014, the Public Finance Management (Amendment) Bill, 2014 sponsored by the Majority Leader, the Hon. Aden Duale, MP, was read a first time and thereafter committed to the Departmental Committee on Finance, Planning & Trade for consideration pursuant to Standing Order No. 127 and Article 118 of the Constitution.

Mr. Speaker, Sir,

In examining the Bill, the Committee noted the following:

1. This is government legislative proposal coming from the National Treasury with the objective of providing for the receipt of proceeds of any loan raised or external government security issued under the Public Finance Management Act, 2012. It also provides for the Appropriations-In-Aid in development expenditure.
2. **Clause 2** of the Bill proposes to amend section 2 of the Principle Act by redefining the “national government Security”; and introducing of new definitions of “*external government security*”, “*external loans*”, and “*loans*” for ease of application of the law
3. **Clause 3** proposes to amend Section 50(7) of the Principal Act to provide for direct disbursement to suppliers where the loan is raised for purposes of financing goods and services provided by a supplier outside Kenya, or to pay expenses associated with borrowing arising from external borrowing. While sub clauses 3(a), 3(b), 3(c) of the Bill addresses the above matter, Sub clause 3 (d) is against prudent public financial management-netting out expenses of a loan- this could be provided for as expenditure item and appropriated by Parliament.
4. **Clause 4 (a)** of the Bill proposes to amend Section 53(6) of the Principal Act to provide for amendment of an agreement to obtain a loan by the national government or any of its entity and to provide that such amendment shall be approved by Parliament if it results in further indebtedness. Clause 4(a) (ii) excludes the requirement that if an amendment to an agreement to obtain a loan is prejudicial to the borrowing entity then it shall be approved by Parliament. This amendment infringes on the role of parliament in limiting the national government’s level of indebtedness.

Clause 4(b) of the Bill proposes to amend Section 53(17) of the Principal Act to exempt application of this section to external loans or external government securities. This amendment violates Section 53(3) that requires that national government securities issued shall be within the borrowing limit set out by the National Assembly.
5. **Clause 5** of the Bill proposes to amend Section 53 of the Principal Act to provide for a new Section 53A to provide for issuance of external securities (including sovereign bonds) by national government. Though this insertion is important, sub clause 53A(6)(c) does not explicitly specify a borrowing agent and may be open to abuse.

6. Clause 6 proposes to amend section 55(9) of the principal Act so as to clarify the role of the Registrar of the securities in relation to external government securities.

Mr. Speaker, Sir,

The Committee will propose appropriate amendments to the Bill in clauses 3, 4, and 5 during the Committee Stage of the Bill with a view to improving the Bill. The Committee will further amend Sections 25, 40, 76, 117, and 191 of the Principal Act that deals with the timelines in Budget making process to give the Legislative arm of both the National and County Governments enough time for scrutiny of budget materials.

Mr. Speaker, Sir,

The Committee is thankful 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 Honourable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.

Mr. Speaker, Sir,

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Finance, Planning & Trade, to table its report in the House on the consideration of the Public Finance Management (Amendment) Bill, 2014 for consideration and adoption Pursuant to Standing Order 127

Signed 

(HON. BENJAMIN LANGAT, MP)

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

Date: 24th APR 2014

COMMITTEE RECOMMENDATIONS

The Committee proposes to introduce the following amendments to the Public Finance Management (Amendment) Bill, 2014 during the Committee Stage of the Bill:-

CLAUSE 3

THAT clause 3 of the Bill be deleted and substituted therefor with:

The Cabinet Secretary shall ensure that the proceeds of any loan raised under this Act are paid into the Consolidated Fund or into any other public fund established by the national government or disbursed directly to the suppliers where the loan is raised for the purpose of financing goods and services provided by a supplier outside Kenya.

Justification

Proceeds can only be paid one Fund. Sub clause 3 (d) is against prudent public financial management. Netting out expenses of a loan can be provided for as expenditure item and appropriated by Parliament.

CLAUSE 4

THAT clause 4(a)(ii) of the Bill be deleted

Justification

This amendment excludes the requirement that if an amendment to an agreement to obtain a loan is prejudicial to the borrowing entity then it shall be approved by Parliament. This amendment infringes on the role of parliament in limiting the level of the government's indebtedness.

CLAUSE 5

THAT, clause 5(6)(c) be deleted

Justification

Sub clause 53A(6)(c) does not explicitly specify a borrowing agent and may be open to abuse.

INSERTING NEW CLAUSES IMMEDIATELY AFTER CLAUSE 6

NEW CLAUSE 7

THAT the Bill be amended by inserting the following new New Clause 7-

7. Section 25 of the Principal Act is amended -

- i. In subsection (2) by deleting the words "15th February" and substituting therefore the words "20th January"
- ii. In subsection (7) by deleting the words "fourteen days and substituting therefore the words "thirty days"
- iii. In subsection (8) by deleting the words "take into account" and substituting therefore the words "comply with"

Justification

These provisions are meant to give parliament adequate time (30 days) to consider and pass the Budget Policy Statement. The National Treasury will also be required to comply with Parliament report on BPS when preparing the Division of Revenue Bill.

NEW CLAUSE 8

THAT the Bill be amended by inserting the following new clause 9 –

8. Section 40 of the Principal Act is amended -

- i. In subsection (3) by deleting the words "the Finance Bill" and substituting therefore the words "a legislative proposal"
- ii. In sub-section (4) by deleting the words "the Finance Bill by the Cabinet Secretary, the relevant committee of the National Assembly shall introduce the Bill in the National Assembly together with the report of the committee on the Bill" and substitute therefor the words "the legislative proposal of the Cabinet Secretary, the relevant committee of the National Assembly shall introduce a Finance Bill in the National Assembly"

Justification

These provisions recognize that the revenue raising measures presented by the cabinet Secretary are only legislative proposals and not a Bill per se.

NEW CLAUSE 9

THAT the Bill be amended by inserting the following new clause 9-

9. Section 76 of the Principal Act is amended by -

- i. In subsection (3) by inserting the words "National Assembly," before the words "National Treasury".
- ii. In subsection (4) by inserting a new subsection 76(4):

(4) A collector of revenue for the national government shall provide monthly statements to the National Assembly in adequate detail and format prescribed in regulations approved by the National Assembly before publishing the same information in the gazette.

Justification

Provides for regular reporting on national revenue collection to parliament

NEW CLAUSE 10

THAT the Bill be amended by inserting the following new Clause 10—

10. Section 117 of the Principal Act is amended—

- i. In subsection (1) by deleting the words “28th February” and substituting therefore the words “14th February”
- ii. In subsection (6) by deleting the words “fourteen days” and substituting therefore the words “thirty days”

Justification

These amendments relate to Introduction and passage of County Fiscal Strategy Paper (CFSP) with the County Assemblies. County assemblies have been given adequate time (30 days) to consider and pass CFSP just the same way Parliament has with regard to the PBS.

NEW CLAUSE 11

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

11. Section 191 of the Principal Act is amended —

- i. By deleting subsection (1) and replacing therefore the following new subsection:
(1) Each year, not later than ten days after Parliament has adopted a resolution on the Budget Policy Statement referred to in Section 25(7) there shall be introduced a Division of Revenue Bill in Parliament for consideration and approval.
- ii. By inserting the following new subsections (2) and (3) immediately after subsection (1)
(2) Not later than ten (10) days after passing of the Division of Revenue Bill, there shall be introduced in Parliament a County Allocation of Revenue Bill for consideration and approval
(3) Parliament shall consider and pass the Division of Revenue Bill and the County Allocation of Revenue Bill, not later than twenty-one (21) days after their respective introduction.

MINUTES OF THE 24TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON WEDNESDAY 23RD APRIL, 2014 IN 4TH FLOOR, CONTINENTAL HOUSE, AT 12.00 P.M

Present

1. Hon. Benjamin Langat, MP - Chairperson
2. Hon. Nelson Gaichuhie, MP - Vice-Chairperson
3. Hon. Timothy Bosire, MP
4. Hon. Sumra Irshadali, MP
5. Hon. Sakwa John Bunyasi, MP
6. Hon. Jimmy Nuru Angwenyi, MP
7. Hon. Jones Mlolwa, MP
8. Hon. Iringo Cyprian Kubai, MP
9. Hon. Joash Olum, MP
10. Hon. Abdul Rahim Dawood, MP

Absent With Apologies

1. Hon. Sammy Koech, MP
2. Hon. Sakaja Johnson, MP
3. Hon. Tiras Ngahu, MP
4. Hon. Lati Lelelit, MP
5. Hon. Shakeel Shabbir Ahmed, MP
6. Hon. Alfred Sambu, MP
7. Hon. Mary Emase, MP
8. Hon. Joseph Limo, MP
9. Hon. Dennis Waweru, MP
10. Hon. Anyanga Andrew Toboso, MP
11. Hon. Sammy Mwaita, MP
12. Hon. Ogendo Rose Nyamunga, MP
13. Hon. Patrick Makau King'ola, MP
14. Hon. Abdullswamad Sheriff, MP
15. Hon. Dr. Oburu Oginga, MP
16. Hon. Ronald Tonui, MP
17. Hon. Daniel Epuyo Nanok, MP
18. Hon. Eng. Shadrack Manga, MP
19. Hon. Kirwa Stephen Bitok, MP

IN ATTENDANCE

1. Mr. Evans Oanda - First Clerk Assistant

- | | | |
|------------------------|---|-----------------------|
| 2. Ms. Esther Nginyo | - | Third Clerk Assistant |
| 3. Mr. Nyaga | - | Fiscal Analyst |
| 4. Mr. Mwaniki Gichohi | - | Fiscal Analyst |
| 5. Mr. Josephat Motonu | - | Fiscal Analyst |

MIN.NO. DCF/114/2014 PRELIMINARIES

The Chairperson called the meeting to order at 12.38 pm followed by a word of prayer.

MIN.NO. DCF/115/2014: CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2014

The Parliamentary Budget office presented the analysis of the Public Finance Management (Amendment) Bill, 2014 mainly highlighting the following;

1. Background

The principal object of the proposed Public Finance Management (Amendment) Bill, 2014 is to propose various amendments to the PFM Act (No. 18 of 2012) so as to provide for external borrowing through the issuance of external debt instruments sovereign bonds as well as to regularize and provide Appropriations in Aid in development expenditure.

2. Clause by Clause Analysis , Summary and Comments

Clause	Highlights	Comments
Clause 1	The new Act may be cited as the Public Finance Management (Amendment) Act, 2014	<ul style="list-style-type: none"> This clarifies that this Bill proposes to amend a Principal Act in the short title
Clause 2	Amends Section 2 of the PFM Act, 2012 by redefining national government security; The clause also inserts new definitions for: external government security; external loans; and loans	<ul style="list-style-type: none"> The definitions in Clause 2(a) provides for redefinition of a national government security to include external debt instruments. Clause 2(b & c) provide a wider scope of definition of the terms for ease of applicability of the law.
Clause 3	Amend Section 50(7) to provide for proceeds of any loan to be disbursed directly to suppliers where the loan is raised for purpose of financing goods and services provided by a supplier outside Kenya, or to pay expenses associated with borrowing arising from the external borrowing.	<ul style="list-style-type: none"> This clause provides that all proceeds of loans must be paid into the Consolidated Fund, as well as, other funds. Clause D is against prudent public financial management – netting out expenses of a

		<p>loan – this could be provided for as expenditure item and appropriated by Parliament.</p> <ul style="list-style-type: none"> • However Sub-Clause C is important in providing for A-in-A development. Principal Act may be amended in Clause 50(7) to provide for this.
Clause 4	<p>Amend Section 53 (6) to provide for amendment of an agreement to obtain a loan by national government or any of its entity and to provide that such amendment shall be approved by Parliament if it results in further indebtedness.</p> <p>Amend Section 53 by inserting a new Sub-Section 17 that excludes the application of the provisions of this section to external loans or external government securities.</p>	<ul style="list-style-type: none"> • The amendment excludes the requirement that if an amendment to an agreement to obtain a loan is prejudicial to the borrowing entity then it shall be approved by Parliament. This amendment will infringe on the role of Parliament in providing oversight. • New Sub-Section 17 violates Section 53(3) of the Act which requires that national government securities issued shall be within the borrowing limit set out by the National Assembly.
Clause 5	<p>Amend Section 53 by providing for a new Section 53A which provides for issuance of external securities (including sovereign bonds) by national government.</p>	<ul style="list-style-type: none"> • This is necessary provision to allow for national government to issue external securities including sovereign bonds to raise revenue. • Clause 53A(6)(C)
Clause 6	<p>Amend Section 55(9) in the margin note to include National Government entity.</p>	<ul style="list-style-type: none"> • This provision is necessary for clarity.

3. Issues for Address in the PFM Act

The following are some of the issues and observations from the analysis;

- i. Amendment to Section 40, 132: - provide for the submission of a legislative proposal to Parliament by the Executive and the publishing of a Bill by Parliament – Finance Bill.
- ii. Amendment to Section 25, 117:
 - a. Provide for additional time for Parliament to examine and discuss the Budget Policy Statement and County Assemblies with the County Fiscal Strategy papers.

- b. The BPS to arrive before the DORB and CARB as opposed to all at once.
- iii. Amendment to Section 78: - Provide for KRA which is appointment collector of revenue to publish and publicize collections against targets on a regular basis – this will promote transparency and good PFM management.

COMMITTEE OBSERVATION

The Committee observed that it was important to have amendments providing for inclusion for all the collectors of revenue as well as providing for the collectors to publish and publicize collections for transparency.

The Committee further observed the need to provide in law for audit of the loans for projects from foreign firms.

COMMITTEE RESOLUTIONS

The Committee requested the Secretariat to prepare a report on the Bill for tabling by the Chairman on Thursday 24th April, 2014. The report should include the properly drafted proposed amendments to the Bill as was agreed during the meeting.

MIN.NO. DCF/116/2014 ADJOURNMENT

The Chairperson adjourned the meeting at 13. 11 p.m.

Signed.....
Chairperson

Date.....