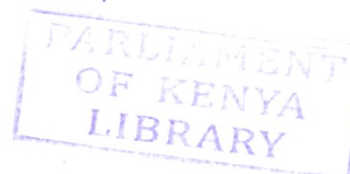




REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

Approved
2023 D/SNA
13/03/2024



THIRTEENTH PARLIAMENT – THIRD SESSION

DEPARTMENTAL COMMITTEE ON EDUCATION

REPORT ON:

CONSIDERATION OF THE HIGHER EDUCATION LOANS BOARD (AMENDMENT)
BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 10) BY HON. JOYCE KAMENE, MP

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	13 MAR 2024 WEDNESDAY
TABLED BY:	Hon. Phyllis Bortuo, MP Member, Committee on Education
CLERK-AT-THE-TABLE:	Miriam Mado

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March, 2024

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CHAIRPERSON'S FOREWORD

The Higher Education Loans Board (Amendment) Bill, 2023 (National Assembly Bill No. 10) sponsored by the Hon. Joyce Kamene, MP was read a First Time on 9th August, 2023 and committed to the Departmental Committee on Education for consideration and reporting to the House, pursuant to Standing Order 127(1).

The object of the Bill is to amend the principal Act as follows;

1. To waive the imposition of interest on the principal amount of a loan advanced to the youth and person with disabilities until such time as they have secured their first employment
2. To set the percentage of interest that may be charged on the loan advanced at three per cent.
3. To provide that the penalty charged on defaulting of the loan shall be charged after securing employment or five years after completion of studies.
4. To reduce the financial burden on recent graduates who are expected to pay large sums of money to the Higher Education Loans Board even before securing employment or becoming financially stable.
5. To provide for the amendment to section 2 of the Act to insert the definitions of the terms "disability" and "youth" which are used in the proposed amendments.
6. To provide for the amendment of section 6 of the Act to remove the function of setting the rate of interest from the Board.
7. To provide for the amendment of section 15 of the Act by inserting a new subsection that provides that interest in the case of the youth and persons with disabilities shall become due upon them securing employment after completion of their studies.
8. To provide for the insertion of a new section that sets the rate of interest charged on the loans at a maximum of three per cent per annum. It also provides that the penalty charged

on defaulting of the loan shall be charged after securing employment or five years after completion of studies.

Pursuant to Article 118(1) (b) of the Constitution of Kenya and National Assembly Standing Order 127(3) advertisement for request for submission of memoranda were placed in the "Daily Nation" and the "Standard" newspapers of 16th August 2023 inviting the public to submit representations they may have on the Bill.

The Committee received submissions from the following-

- i. The Ministry of Education,
- ii. Hon. Joyce Kamene, MP
- iii. The Kenya Law Reform Commission; and
- iv. Office of the Attorney-General and Department of Justice.

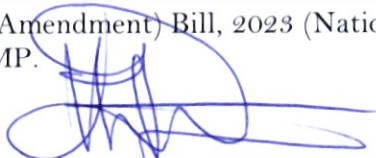
All the submissions were considered by the Committee.

Further, while considering the Bill the Committee held a total of three (3) meetings to receive and consider submissions. The Committee having considered the Bill clause by clause and taking into consideration views and recommendations of the stakeholders pursuant to Standing Order 127(3A) made observations and recommendations as contained this Report.

Acknowledgement

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings.

On behalf of the Committee, and pursuant to Standing Order 127(4), it is my pleasant duty to table the Report of the Departmental Committee on Education and Research on its consideration of the Higher Education Loans Board (Amendment) Bill, 2023 (National Assembly Bill No. 10) sponsored by the Hon. Joyce Kamene, MP.



HON. JULIUS MELLY, CBS, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON EDUCATION

1.0 PREFACE

1. 1 Mandate of the Committee

1. The Departmental Committee on Education and Research was constituted pursuant to the provisions of Standing Order No. 216(1) of the National Assembly Standing Orders. Pursuant to the Standing Order 216 (5) read together with the Second Schedule to the Standing Orders, the functions of the Committee are to: -

- a) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the Ministry of Education;*
- b) *study the programme and policy objectives of Ministry and the Departments of the Ministry, and the effectiveness of the implementation;*
- c) *study and review all legislation referred to it;*
- d) *study, assess and analyze the relative success of the relevant Ministry as measured by the results obtained as compared with their stated objectives and,*
- e) *investigate and inquire into all matters relating to the as may be necessary, and as may be referred to the Committee by the House;*
- f) *to vet and report on all appointments where the Constitution or any law requires the National Assembly and by extension, the Committee to approve;*
- g) *make reports and recommendations relating to the functions of the relevant Ministry to the House as often as possible, including recommendation of proposed legislation;*
- h) *make recommendations to the House as often as possible, including recommendation of proposes legislation;*
- i) *consider reports of the relevant commissions and independent offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- j) *examine any questions raised by Members on a matter within the mandate of the Committee.*

1.2 Subjects

2. The Committee's subjects according to the Second Schedule of the Standing Orders are as follows-

- i) Education;
- ii) Training; and
- iii) Research.

3. The Committee oversees the following government entities: -

- (a) Ministry of Education comprising the following State Departments:
 - (i) State Department for Early Learning and Basic Education
 - (ii) State Department for University Education
 - (iii) State Department for Vocational and Technical Training
- (b) The Teachers Service Commission.

1.3 Committee Membership

4. The Committee comprises of the following Members: -

1. Hon. Julius Kibiwott Melly, MP

Chairperson
Tinderet Constituency
UDA

2. Hon. Moses Malulu Injendi, MP

Vice Chairperson
Malava Constituency
ANC

3.Hon. Dr. Christine Oduor Ombaka, MP

Siaya County
ODM

10.Hon Julius Taitumu M'Anaiba, MP

Igembe North Constituency
UDA

4.Hon. Eve Akinyi Obara, MP

Kabondo Kasipul Constituency
ODM

11.Hon. Nabii Nabwera Daraja, MP

Lugari Constituency
ODM

5.Hon. Jerusha Mongina Momanyi, MP

Nyamira County
JP

12.Hon. Peter Ochieng Orero, MP

Kibra Constituency
ODM

6.Hon. Abdul Ebrahim Haro, MP

Mandera South Constituency
UDA

13.Hon. (Prof.) Phylis Jepkemoi Bartoo

Moiben Constituency
UDA

7.Hon. Anne Muratha, MP

Kiambu County
UDA

14.Hon. Rebecca Noonaishi Tonkei, MP

Narok County
UDA

8.Hon. Clive Gisairo, MP

Kitutu Masaba, Constituency
ODM

15. Hon. Timothy Toroitich, MP

Marakwet West Constituency,
IND

9.Hon. Dick Oyugi Maungu, MP

Luanda Constituency
DAP-K

1.4 Committee Secretariat

5. The Committee secretariat comprise of: -

Ms Rose M. Wanjohi
Senior Clerk Assistant

Mr. Clive Onyancha
Clerk Assistant III

Mr. Kimathi S Timothy
Clerk Assistant III

Mr. Eric Kanyi
Fiscal Analyst II

Ms. Colleta Sigilai
Senior Legal Counsel
Ms. Winnie Kulei
Research Officer

Dr. Maina Mburu
Research Officer

Mr. Richard Sang
Sergeant-at-Arms

Mr. Daniel Psirmoi
Media Relations Officer

Mr. Nimrod Ochieng
Audio Recording Officer

Ms. Pauline Njuguna
Hansard Reporter

Mr. Jared Onyancha
Protocol Officer

2.0 CONSIDERATION OF THE BILL BY THE COMMITTEE

2.1 Committal of the Bill

6. The Higher Education Loans Board (Amendment) Bill, 2023 (National Assembly Bill No. 10) sponsored by the Hon. Joyce Kamene, MP was read a First Time on 9th August, 2023 and committed to the Departmental Committee on Education and Research for consideration and reporting to the House, pursuant to Standing Order 127(1).

2.2 Memorandum of Objects and Reasons for the Bill

7. The principal object of this Bill is to amend the HELB Act, 1995 to waive the imposition of interest on the principal amount of a loan advanced to the youth and person with disabilities until such time as they have secured their first employment.
8. The Bill sets the percentage of interest that may be charged on the loan advanced at three per cent.
9. The Bill further provides that the penalty charged on defaulting of the loan shall be charged after securing employment or five years after completion of studies.
10. The Bill also provides that the penalty charged on defaulting of the loan shall be charged after securing employment or five years after completion of studies.
11. The aim of these proposals is to reduce the financial burden on recent graduates who are expected to pay large sums of money to the Higher Education Loans Board even before securing employment or becoming financially stable.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

12. The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

13. The Bill does not affect the functions of the county governments in terms of Article 109 (5) of the Constitution as it does not contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.
14. The Universities and other institutions of higher learning are functions of the national government as provided in Part 1 of the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

15. The enactment of the Bill shall not occasion expenditure of public funds.

2.3 Public Participation on the Bill

16. Pursuant to Article 118(1) (b) of the Constitution and Standing Orders 127(3), advertisement for request for submission of memoranda was placed in the "Daily Nation" and the "Standard" newspapers on 16th August 2023 inviting the public to submit representations they may have on the Bill. (Annex 1).
17. The Committee received submissions from-
 - i. The Ministry of Education,
 - ii. Hon. Joyce Kamene,
 - iii. Kenya Law Reforms Commission and
 - iv. the Attorney General's Office

All the submissions were considered by the Committee.

18. In considering the Bill the Committee held a total of three meetings to receive and consider submissions from the stakeholders.

2.4 SUBMISSIONS BY THE STAKEHOLDERS

2.4.1 Submission from Hon. Joyce Kamene, MP

19. She indicated that clause 2 of the Bill seeks to amend Section 2 of the Act by introducing definition of "disability" and "youth".
20. Clause 3 of the Bill seeks to remove the function of setting interest rates from the Board.
21. Clause 4 of the Bill seeks to insert a new subsection which provides that the loans advanced to youth and persons living with disability shall not accrue interest until these beneficiaries have secured employment.
22. Clause 5 of the Bill seeks to set a maximum interest rate of 3% on loans.

2.4.2 Submissions by the State Department for Higher Education

23. The Ministry indicated that introducing the definition of disability and youth is not important because Article 260 of the Constitution has already provided for the definition of the Youth. Moreover, the Persons with Disability Act 2003 defines disability in the same way as it is in the proposed bill.
24. The youth account for 95% of the HELB Loan beneficiaries and giving them preferential treatment then advantages almost every HELB loan beneficiary.
25. The Ministry suggested that the function of setting interest rates should be left with the Board as it is best placed to monitor performance of the revolving fund and its sustainability and impact in financing higher education.
26. HELB further indicated that the Persons with Disabilities have an added advantage over other students with their higher education being fully funded in terms of loans. They are not subjected to Means Testing Instruments. Most of them also benefit from National

Council of Persons Living with Disabilities (NCPWD) who supplement their higher education financing. It will thus not be tenable to waive their interest on account of their status.

27. The Committee was informed that the 4% interest rate is way below the 7.3% inflation rate as at July 2023 and 8.87% over the last ten years.
28. There is also no mechanism of determining what constitutes employment, when one is deemed to be employed and how to communicate to HELB information that one is employed. Moreover, interest earned goes towards financing other needy students. In the absence of capitation from the National Treasury, less students will be financed.
29. The Ministry was also concerned that extending grace period to five years will mean funding less students because income from loan repayment goes towards funding other needy students. Long delays of penalties and interests will make beneficiaries take advantage of the provision and fail to pay even when they are able to.
30. The committee was also informed that reviewing the interest rate downwards and the proposed delay in repayments will have an adverse effect on the cash flows considering that currently 37% of the students loan budget is from Appropriation in Aid. This would then mean that more capitation would be required from treasury to make up for the loss in interest.
31. HELB indicated that the interest rate is currently set by the Board and providing it in law would mean Parliament legislating on any change as and when required.

2.4.3 Kenya Law Reform Commission

32. The KLRC submitted that the Board currently administers student loans at an interest rate of four per centum per annum for undergraduate and TVET students whose repayment is deferred until after graduation. It also funds the salaried undergraduate and postgraduate students who repay the loans as they study through the *Jielimishe* Loan product at 10% per annum. This amendment would limit the Board's power to vary interest rates depending on the prevailing market conditions and the performance of the revolving fund. Further salaried applicants may not be too needy as to require such an incentive.
33. KLRC agreed with the amendment since it gives youth and persons living with disability an opportunity to commence paying their loans without having the loans accrue huge amounts in interest. The amendment gives youths and persons living with disability a grace period to secure employment or venture into business before commencing the repaying the loans. It also prevents this class of loanees from being heavily indebted at the time of commencing the repayment of the loans.
34. The amendment covers the administration of undergraduate and TVET student loans which are currently at 4% and those for the salaried undergraduate and postgraduate students which are currently at 10%. Salaried undergraduate and postgraduate students could be in a position to easily afford the loans. The amendment should indicate whether

it applies to only needy undergraduate and TVET students or to salaried students pursuing undergraduate and postgraduate studies as well.

2.4.4 Office of the Attorney-General and Department of Justice

35. Clause 2 of the Bill seeks to amend section 2 of the Act relating to interpretation of terms by introducing the definition of additional terms into the interpretation section namely the definition of "disability" and "youth". The committee was informed that the proposal is unnecessary as both terms are defined adequately in other pieces of legislation. The term disability is defined in the persons with disability Act and the term "youth" is defined in the Constitution. They proposed for the definitions to be withdrawn or if inserted for the Act to make a cross reference to main legislation that defines these terms.
36. Clause 3 of the Bill seeks to amend section 6 of the Act which provides for the functions of the Board. The proposal seeks to remove from the Board, the function of setting the rate of interest for loans granted under the Act. The Board will thus not be responsible for setting the interest rates to be charged on the higher education loans granted under the Act. The committee was informed that the proposal may pose a challenge in implementation as it is not clear who will be mandated to set the interest rate to be charge on loans issued under the Act.
37. Clause 4 of the Bill seeks to amend section 15 of the Act which sets out the obligation of loanees. The amendment proposes to insert a new subsection which seeks to provide that the loans advanced to the youth and persons with disabilities shall not accrue for as long as these persons have not secured employment. The proposal seeks to have the interest on the loans to only accrue from the time these persons get employment.
38. In addition, the proposal may affect the effective operations of the Fund as the disbursements rely on loan repayment/recovery as a major component of resource mobilization. Further, a majority of the loanees complete university at the age between 22 and 25 years thus a proposal to waive interest for the youth is likely to impact on interest loans to majority of the beneficiaries thus affecting the resources in the fund. This will in turn lead to over reliance on exchequer.
39. It was indicated that although the provision does not raise any significant constitutional issues, noting the ever growing inflation rate in the economy it may be necessary to leave the setting of interest rates open as provided in Section 6 so as to cater for the rising cost of inflation. Further if this provision is retained and there is need to revise the interest rate, the Act will need to be amended to reflect the new interest rates. The AG recommended for the provision to be deleted and the proposed amendment to section 6 be deleted.
40. From the foregoing, the office of the AG noted that though the legislative proposal does not raise significant constitutional issues they proposed for the same to be withdrawn as the proposals may have serious implications on the continuity of the Fund.

41. The Committee was also informed that the AG's office was consulting with the Ministry and the ministry noted that it is in the process of developing a Bill which will merge the Funds under the University Act and Technical and Vocational Education and Training Act with the Higher Education Loans Board Act and the proposed bill will repeal the Higher Education Loans Board Act.

3.0 COMMITTEE ANALYSIS OF THE SUBMISSIONS

SECTION AMENDED	CURRENT PROVISION	PROPOSED AMENDMENT	Memoranda received	Rationale	Remarks
2	Section of the Act which provides for definitions	2. Section 2 of the Higher Education Loans Board Act (hereinafter referred to as the principal Act) is amended by inserting the following new paragraphs in their proper alphabetical sequence— “disability” includes any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day-to-day activities; “youth” means a person who—	State Department for Higher Education The definition of youth and disability is not necessary.	Article 260 of the Constitution has already provided for the definition of the Youth. Moreover, the Persons with Disability Act 2003 defines disability in the same way as it is in the proposed bill.	
			Office of the Attorney General and Department	Already provided for in the Constitution and Persons with	

		(a) has attained the age of eighteen years; but (b) has not attained the age of thirty-five years.	nt of Justice Definition of the terms not necessary.	Disability Act, 2003.	
6	6. Functions of the Board The functions of the Board shall be— (a) to formulate sound policies for regulating the management of the Fund; (b) to solicit for funds and other assistance to promote the functions of the Board; (c) to set the criteria and conditions governing the granting of loans including the rate of interest and recovery of loans; (d) to receive any	3. Section 6 of the principal Act is amended in paragraph (c) by deleting the words “rate of interest and” appearing immediately before the word “recovery”.	State Department for Higher Education Rejected	Setting interest rates should be left with the Board as it is best placed to monitor performance of the revolving fund and its	
			Attorney General and Department of Justice	sustainability and impact. It is not clear who will be	
			Rejected	mandated to set the interest rates.	

gifts, donations, grants or endowment s made to the Board, and to make legitimate disburseme nts therefrom; (e) to establish and maintain links with other persons, bodies or organizatio ns within or outside Kenya, as the Board may consider appropriate for the furtherance of the purposes for which the Board is established; (f) to enter into contracts with financial institutions for the purpose of loans disburseme nt and recovery; (g) to grant loans				
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	out of the Fund either with or without security, as the Board may deem fit, to any eligible person to enable him, or assist any student, to meet the cost of higher education; (h) to determine the maximum number of eligible persons or students to be granted loans in any one particular year; (i) to invest any surplus funds not currently required for the purpose of the Board in any investment authorized by law for the investment of trust funds with power from time to time				
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	to vary or realize those investments ; (j) with the consent of the Minister, to set up and expend such other funds as may from time to time be required; (k) to receive and consider all loan applications from eligible persons or students wishing to be considered for the award of higher education loans, and to approve, withhold or reject such requests in accordance with the provisions of this Act; (l) to borrow such monies from such sources and in such amounts as may be approved by the Minister with the				
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	concurrence of the Treasury and to secure such loans in such manner as they deem fit; (m) to take out insurance cover for risky loans such as death, incapacity or inability to pay, as the Board deems fit; (n) to establish and award bursaries and scholarships which it may consider necessary for the promotion of the objectives and functions of the Board. (o) to perform any other functions relating to the granting of students' loans in accordance				
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	with the provisions of this Act; and (p) to perform and exercise all other functions and powers conferred on the Board by this Act.				
15	Obligations of the Loanees (1) A loanee shall be required, subject to and in accordance with this Act or any regulations made thereunder, within one year of completion of his studies or within such a period as the Board decides to recall its loan whichever is the earlier— (a) to inform the Board of his contact address;	Section 15 of the principal Act is amended— (a) by inserting the following new subsection immediately after subsection (1) — “(1A) Notwithstanding the provisions of subsection (1) (b), no interest shall be charged on the principal amount advanced to the youth and persons with disabilities until they have secured	State Department for Higher Education Rejected	The youth account for 95% of the HELB Loan beneficiaries and giving them preferential treatment then advantages almost every HELB loan beneficiary. The is no mechanism of determining what constitutes employment, when one is deemed to be employed and how to communicate to HELB informatio	

	(b) to begin repayment of his loan together with any interest accrued thereon; (c) if he is in formal employment , to authorize his employer to deduct the loan repayment and to remit it to the Board in such manner as the Board may direct.	their first employment upon completion of studies”.	Kenya Law Reform Commission Agreed with.	n that one is employed. The amendment gives youths and persons living with disability a	
	(2) Any loanee who fails or neglects to satisfy the requirements of subsection (1) within the stipulated time shall, in addition to any other action that the Board may take against him, be guilty of	(b) in subsection (2) by deleting the words “ within the stipulated time” appearing immediately after the words “subsection (1)” where they first appear and substituting therefor the words “ upon securing employment or within five years after completion of his studies”.		grace period to secure employment or venture into business before commencing the repaying the loans.	

	an offence and liable to a fine of not less than five thousand shillings in respect of each loan deduction that remains unpaid in accordance with provisions of subsection (1) and such fine shall be payable to the Board.				
14	Insertion of new section	<i>Interest rate.</i> 14(A). The maximum interest rate to be charged by the Board on the principal amount advanced to a loanee shall not be more than three per cent per annum.	State Department for Higher Education Rejected	The 4% interest rate is way below the 7.3% inflation rate as at July 2023 and 8.87% over the last ten years.	

4.0 COMMITTEE OBSERVATIONS

42. The Committee observed as follows:-

- (a) The Bill seeks to cushion unemployed graduate loanees who benefitted from HELB loans from being charged interest on the loan before securing employment. Loanees will only begin to repay the loan within one year after securing employment or five years after completion of studies.
- (b) The Bill will weaken the Board's ability to mobilize funds to become a self-sustaining organization in the long term to serve the ever increasing number of students joining institutions of higher learning in the wake of reducing government financing.
- (c) HELB has no mechanism of determining who has secured employment and it relies on goodwill from loanees and employers who may not always be willing to notify HELB on the loanees' employment status.

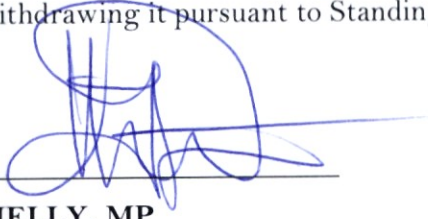
5.0 COMMITTEE RECOMMENDATIONS

43. The Committee having considered all clauses of the Bill recommends as follows;

- i. Clause 1 – Deletion
- ii. Clause 2 – Deletion
- iii. Clause 3 – Deletion
- iv. Clause 4 – Deletion
- v. Clause 5 – Deletion

The Committee having considered the Bill clause by clause and considering views and recommendations of the stakeholders pursuant to Standing Orders 127 (3A) recommends that the **amendments contained in the Bill should be deleted in their entirety** and its sponsor should consider withdrawing it pursuant to Standing Order 140 (A).

SIGNED _____



DATE

13/03/2024

HON. JULIUS MELLY, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON EDUCATION.

Annexure 1: Adoption List



PARLIAMENT OF KENYA
NATIONAL ASSEMBLY
13TH PARLIAMENT
THIRD SESSION (2024)
DEPARTMENTAL COMMITTEE ON EDUCATION

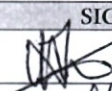
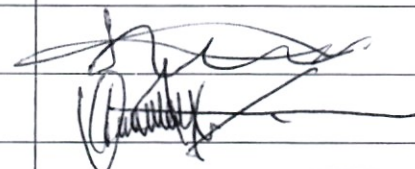
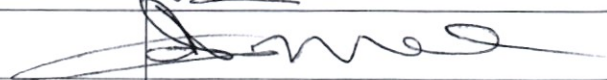
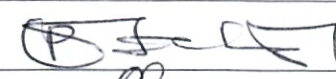
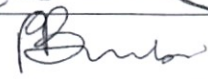
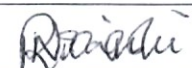
DATE: 5/3/2024

ADOPTION LIST

VENUE: COMMITTEE ROOM, 2ND FLOOR CONSTITUTIONAL HOUSE

AGENDA:

ADOPTION OF REPORT ON HELB (AMENDMENT) BILL NO. 10

No.	HON MEMBER	SIGNATURE
1.	Hon. Julius Melly, M.P. Chairperson	
2.	Hon. Moses Malulu Injendi, M.P. Vice Chairperson	
3.	Hon. Dr. Christine Oduor Ombaka, M.P.	
4.	Hon. Eve Obara, MBS, M.P.	
5.	Hon. Jerusha Momanyi, M.P.	
6.	Hon. Abdul Ebrahim Haro, M.P.	
7.	Hon. Anne Wanjiku Muratha, M.P.	
8.	Hon. Clive Ombane Gisairo, M.P.	
9.	Hon. Dick Maungu Oyugi, M.P.	
10.	Hon. Julius Taitumu M'Anaiba, M.P.	
11.	Hon. Nabii Nabwera Daraja, M.P.	
12.	Hon. Peter Ochieng Orero, M.P.	
13.	Hon. Prof. Phyllis Jepkemoi Bartoo, M.P.	
14.	Hon. Rebecca Noonaishi Tonkei, M.P.	
15.	Hon. Timothy Kipchumba Toroitich, M.P.	

Annexure 2: Minutes of the Committee sittings.

**MINUTES OF THE 56TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
EDUCATION HELD ON WEDNESDAY, 13TH SEPTEMBER 2023, IN 2ND FLOOR
COMMITTEE ROOM, CONTINENTAL HOUSE, AT 10:00 AM**

PRESENT

1. Hon. Julius Kibiwott Melly, MP
2. Hon. Moses Malulu Injendri, MP
3. Hon. Jerusha Mongina Momanyi, MP
4. Hon. Abdul Ebrahim Haro, MP
5. Hon. Anne Wanjiku Muratha, MP
6. Hon. Dick Maungu Oyugi, MP
7. Hon. Julius Taitumu M'Anaiba
8. Hon. Peter Ochieng Orero, MP
9. Hon. Rebecca Noonaishi Tonkei, MP
10. Hon. Timothy Kipchumba Toroitich, MP

- Chairperson
- Vice-Chairperson – Session Chair

ABSENT WITH APOLOGY

1. Hon. Dr. Christine Ombaka Oduor, MP
2. Hon. Eve Akinyi Obara, MP
3. Hon. Clive Ombane Gisairo, MP
4. Hon. Nabii Nabwera Daraja, MP
5. Hon. (Prof.) Phylis Jepkemoi Bartoo, MP

IN ATTENDANCE

COMMITTEE SECRETARIAT

1. Ms. Grace Wahu
2. Ms. Colleta Sigilai
3. Mr. Eric Kanyi
4. Dr. Mburu Maina
5. Mr. Daniel Psirmoi
6. Mr. Nimrod Ochieng
7. Ms. Rose Ndegi

- Clerk Assistant III
- Senior Legal Counsel
- Fiscal Analyst II
- Research Officer III
- Media Officer
- Audio Officer
- Senior Serjeant-At-Arms

AGENDA

1. Prayers
2. Adoption of the agenda
3. Confirmation of Minutes of the 55th Sitting held on 12th September, 2023
4. Meeting with the following stakeholders and Hon. Joyce Kamene, MP in regards to the Higher Education Loans Board (Amendment) Bill, 2022 and Higher Education Loans Board (Amendment) Bill, 2023:
 - a. Office of the Attorney General
 - b. Dr. Beatrice Inyangala, PS Higher Education and Research
 - c. Mr. Charles Ringera, CEO HELB
 - d. Kenya Law Reform Commission
5. Any other Business
6. Adjournment and date of the next sitting.

MIN.NO.EDUC/2023/282: PRELIMINARIES

The Chairperson called the meeting to order at 10.10 am and a prayer said by Hon. Abdul Haro, MP. The agenda was adopted having been proposed by Hon. Abdul Haro, MP, and seconded by Hon. Malulu Injendi, MP.

MIN.NO.EDUC/2023/283: CONFIRMATION OF MINUTES

- a. **Confirmation of Minutes of the 55th Sitting held on Tuesday, 12th September, 2023 at 12.00 Noon.**

The Minutes of the 55th Sitting were deferred to the next Sitting.

MIN.NO.EDUC/2023/284: BRIEFING ON THE VOCATIONAL TRAINING BILL (SENATE BILL) 2022 BY THE SENIOR LEGAL COUNSEL

The Legal Counsel guided the Committee through the Bill giving a critique of the Bill.

Committee Observations

1. The Committee noted that there is need to look at the Bill against the TVET Act in order to identify similarities.
2. In Clause 4(a), the policy affecting vocational centres should be formulated by the Cabinet Secretary.
3. If counties are given a leeway to formulate the policies, it might affect the roles of the Cabinet Secretary. This should be provided for in the Bill.
4. The Committee also observed that Clause 5(b) should be amended since the obligation of formulating programs and policies should be a preserve of the National Government.
5. The Committee noted that there should be a provision in the Bill indicating that if there is conflict between the National Government and the County Government, the National Government law takes precedence.

MIN.NO.EDUC/2023/285: MEETING WITH STAKEHOLDERS AND HON. JOYCE KAMENE, MP ON THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL, 2022 AND THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL, 2023

The Committee was appraised on the following in regards to the Higher Education Loans Board (Amendment) Bill, 2022 and Higher Education Loans Board (Amendment) Bill, 2023: -

- a. **Presentation by Hon. Joyce Kamene, MP**

- i. **The Higher Education Loans Board (Amendment) Bill, 2023**

1. **Clause 2** of the Bill seeks to amend Section 2 of the Act by introducing definition of “disability” and “youth”.
2. **Clause 3** of the Bill seeks to remove the function of setting interest rates from the Board.
3. **Clause 4** seeks to insert a new subsection which provides that the loans advanced to youth and persons living with disability shall not accrue interest until these beneficiaries have secured employment.
4. **Clause 5** of the Bill seeks to set a maximum interest rate of 3% on loans.

ii. The Higher Education Loans Board (Amendment) Bill, 2023

Hon. Kamene indicated that Clause 2 of the Bill seeks to amend Section 14 of the Act to mandate the Board to approve loan applications for persons under the age of 18 years.

Committee Concerns

- a. **On defining persons with disabilities and youth yet they are defined under the Persons Living with Disabilities Act and the Constitution 2010 respectively**
Hon. Kamene informed the Committee that the definitions seem to offer clarity since HELB offers loans to other persons other than the ones defined in the Amendment.
- b. **On the effect of the Bill on those who get employment immediately**
The Committee was informed that the Bill targets the youth and the PLWD’S who take long before being employed.
- c. **On why the PLWD’S and the youth are to be given a grace period of five years before imposition of default penalties**
The Committee was informed that this is to give time for the beneficiaries to start some income generating activities such as startup businesses. However, Hon. Kamene indicated that the Committee may change on the length of the grace period.
- d. **On the source of additional funds for HELB**
The Committee was informed that the amended law will motivate more beneficiaries to start repaying their accrued loans. However, the Committee raised a concern that some beneficiaries may still not repay despite the intervention by the proposed Bill.
- e. **On why the revision of interest rates should not be housed under Regulations**
Hon. Kamene asserted that having it in the Act would be good for posterity purposes.
- f. **On the status of the defaulters’ CRB status**
The Committee was informed that there are very many defaulters black listed and this denies them opportunities for jobs that would otherwise enrich their ability to repay their HELB Loans.

b. Submissions by the State Department for Higher Education and Research

i. The Higher Education Loans Board (Amendment) Bill, 2023

The Ministry indicated that introducing the definition of disability and youth is not important because Article 260 of the Constitution has already provided for the definition of the Youth. Moreover, the Persons with Disability Act 2003 defines disability in the same way as it is in the proposed bill.

The youth account for 95% of the HELB Loan beneficiaries and giving them preferential treatment then advantages almost every HELB loan beneficiary.

The Ministry suggested that the function of setting interest rates should be left with the Board as it is best placed to monitor performance of the revolving fund and its sustainability and impact in financing higher education.

In addition, the Ministry stated that Persons with Disabilities have an added advantage over other students with their higher education being fully funded in terms of loans. They are not subjected to Means Testing Instruments (MTI). Most of them also benefit from the National Council of Persons Living with Disabilities (NCPWD) who supplement their higher education financing; therefore, will not be tenable to waive their interest on account of their status.

The Committee was informed that the 4% interest rate was way below the 7.3% inflation rate as at July 2023 and 8.87% over the last ten years.

There is also no mechanism of determining what constitutes employment, when one is deemed to be employed and how to communicate to HELB information that one is employed. Moreover, interest earned goes towards financing other needy students. In the absence of capitation from the National Treasury, less students will be financed.

The Ministry was also concerned that extending the grace period to five years will mean funding less students because income from loan repayment goes towards funding other needy students. Long delays of penalties and interests will make beneficiaries take advantage of the provision and fail to pay even when they are able to.

The Committee was also informed that reviewing the interest rate downwards and the proposed delay in repayments will have an adverse effect on the cashflows considering that currently 37% of the students loan budget is from AIA. This would then mean that more capitation would be required from treasury to make up for the loss in interest.

The HELB indicated that the interest rate is currently set by the Board and providing it in law would mean Parliament legislating on any changes as and when required.

ii. The Higher Education Loans Board (Amendment) Bill, 2022

HELB agreed with the proposal but proposed that another subsection 2B be introduced as follows: *"The provisions of any other written law notwithstanding, the contract between HELB and the applicant shall be deemed to be a contract of necessity and not voidable on account of incapacity to contract."*

This provision will ensure that those granted loans while under 18 cannot refuse to repay loan on account of having lacked capacity to contract at the time of signing the contract.

“Any student who applies for an education loan and who is under the age of 18 years shall be required to have his or her parents or guardians as co-signatories to the loan agreement” be brought in as Subsection 2C.

c. Submissions by the Kenya Law Reform Commission

i. The Higher Education Loans Board (Amendment) Bill, 2023

The Board currently administers student loans at an interest rate of four per centum per annum for undergraduate and TVET students whose repayment is deferred until after graduation. It also funds the salaried undergraduate and postgraduate students who repay the loans as they study through the Jielimishe Loan product at 10% per annum. This amendment would limit the Board's power to vary interest rates depending on the prevailing market conditions and the performance of the revolving fund. Further, salaried applicants may not be too needy as to require such an incentive.

KLRC also agreed with the amendment since it gives youth and persons living with disability an opportunity to commence paying their loans without having the loans accrue huge amounts in interest.

The amendment gives youths and persons living with disability a grace period to secure employment or venture into business before commencing the repaying the loans. It also prevents this class of loanees from being heavily indebted at the time of commencing the repayment of the loans.

The amendment covers the administration of undergraduate and TVET student loans which are currently at 4% and those for the salaried undergraduate and postgraduate students which are currently at 10%. Salaried undergraduate and postgraduate students could be in a position to easily afford the loans. The amendment should indicate whether it applies to only needy undergraduate and TVET students or to salaried students pursuing undergraduate and postgraduate studies as well.

ii. The Higher Education Loans Board (Amendment) Bill, 2022

The KLRC indicated that means need to be devised to ensure that needy but underage applicants access HELB loans. This will prevent needy persons who haven't attained the age of eighteen years from being locked out of loans advanced to support their higher education.

Contracts with minors are voidable in that they cannot be specifically enforced against the minor. However, parents or guardians of minors can name them in contracts only if it benefits them but even in this case, the minor cannot be personally liable. Additionally, minors may not ratify a contract upon attaining age of majority unless a law specifically allows this.

KLRC concluded by asserting that the amendments as proposed in the two Bills will give minors an opportunity to benefit from the loans available to those pursuing higher education. The amendments will also make the loans cheaper as interest payable on them is now capped at three per centum per annum. However, it should be made clear whether this applies to salaried applicants pursuing undergraduate and postgraduate studies as well. Youths and persons living with disability get a grace period within which to begin paying their loans which ensures that the loans do not accumulate penalties as to make them heavily indebted.

d. Submission by the Office of the Attorney General and Department of Justice

i. The Higher Education Loans Board (Amendment) Bill, 2023

Clause 2 of the Bill seeks to amend **section 2** of the Act relating to interpretation of terms by introducing the definition of additional terms into the interpretation section namely the definition of "disability" and "youth".

The Committee was informed that the proposal is unnecessary as both terms are defined adequately in other pieces of legislation. The term disability is defined in the persons with disability Act and the term "youth" is defined in the Constitution. They proposed for the definitions to be withdrawn or if inserted for the Act to make a cross reference to main legislation that defines these terms.

Clause 3 of the Bill seeks to amend **Section 6** of the Act which provides for the functions of the Board. The proposal seeks to remove from the Board, the function of setting the rate of interest for loans granted under the Act. The Board will thus not be responsible for setting the interest rates to be charged on the higher education loans granted under the Act.

The Committee was informed that the proposal may pose a challenge in implementation as it is not clear who will be mandated to set the interest rate to be charge on loans issued under the Act.

Clause 4 of the Bill seeks to amend **Section 15** of the Act which sets out the obligation of loanees. The amendment proposes to insert a new subsection which seeks to provide that the loans advanced to the youth and persons with disabilities shall not accrue for as long as these persons have not secured employment. The proposal seeks to have the interest on the loans to only accrue from the time these persons get employment. Further, the amendment under subsection (2) seeks to ensure that in as much as loan beneficiaries are required under the Act to start repayment of the loan within one year of completion of studies, failure to do so shall not constitute an offence, the loan beneficiary only commits an offence where he fails to start the loan repayment either upon securing employment or within five years after completion of studies.

The Committee was informed that the proposal may affect the effective operations of the Fund as the disbursements rely on loan repayment/recovery as a major component of resource mobilization. Further, a majority of the loanees complete university at the age between 22 and 25 years thus a proposal to waive interest for the youth is likely to hand over interest loans to majority of the beneficiaries thus affecting the resources in the fund. This will in turn lead to over reliance on exchequer.

Clause 5 of the Bill proposes the insertion of a new **Section 14A** which seeks to expressly set a maximum interest rate of three per centum (3%) that can be charged by the Board on the loans issued under the Act. This proposal is tied to the amendment in section six which sought to remove the function of setting interest rates from the Board.

It was indicated that although the provision does not raise any significant constitutional issues, noting the ever-growing inflation rate in the economy it may be necessary to leave the setting of interest rates open as provided in Section 6 so as to cater for the rising cost of inflation. Further, if this

provision is retained and there is need to revise the interest rate, the Act will need to be amended to reflect the new interest rates. The AG recommended for the provision to be deleted and the proposed amendment to Section 6 be deleted.

From the foregoing, the Office of the Attorney General noted that though the legislative proposal does not raise significant constitutional issues, they proposed for the same to be withdrawn as the proposals may have serious implications on the continuity of the Fund.

The Committee was also informed that the Attorney General's office was consulting with the Ministry and the Ministry noted that it is in the process of developing a Bill which will merge the Funds under the University Act and Technical and Vocational Education and Training Act with the Higher Education Loans Board Act and the proposed bill will repeal the Higher Education Loans Board Act.

They further noted that the Legislative Proposal contains similar proposals as in the Higher Education Loans Board (Amendment) Bill, 2022 (National Assembly Bill No. 29) sponsored by Hon. Gideon Keter, MP, which the Departmental Committee on Education and Research in their report dated 10 August 2021, recommended for the Bill not to proceed and for the sponsor of the Bill to consider withdrawing it.

It was suggested that an amendment be done to have the guardians as applicants until the minor becomes of age then the applicant can regularize the application.

ii. The Higher Education Loans Board (Amendment) Bill, 2022

The Committee was informed that **Clause 2** of the Bill seeks to amend **Section 14** of the Act which provides for conditions for grant of loan by inserting new sub sections immediately after sub-section (2) to mandate the board to approve applications by persons under the age of 18 as long as the parents and guardians of the applicant co-sign the loan.

This proposal, though beneficial as it gives access to loans to beneficiaries in institutions of higher education who have not attained the age of majority, may create challenges in the implementation as a minor (a person under the age of 18 years) may not have capacity to enter into a legally binding contract and also can't open a bank account to where the funds can be channelled. Thus, the contracts may be challenged in a Court of law.

It was proposed that the Bill may be amended to consider having the guardians as applicants until the minor becomes of age where the applicant can regularize the application.

Committee Concerns

a. On why the youth and the disabled should be accorded a grace period of five years

The Kenya Law Reform Commission (KLRC) stated that persons living with disability take time before securing employment. HELB added that even according the 5 years will not better loan repayments since Kenyans have a tendency of waiting for the last minute thus inconveniencing prospective beneficiaries.

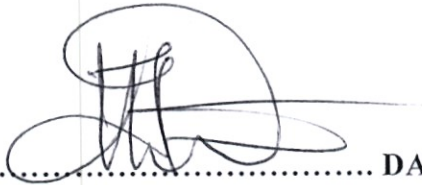
- b. **On how the interests of Persons with Disabilities are safeguarded**
The Ministry indicated that MTI takes care of them where they get a top up. In addition, the NCPWD offers them additional funds.
- c. **On the parameters used to charge 4% interest**
HELB indicated that it calculates cost of money using default rates and the cost of running business. The Committee was further informed that the HELB kitty has shrunk due to inflation levels. HELB would lose 1.8B if the interest rate is reduced to 3%.
- d. **On how HELB sensitizes beneficiaries on the need to repay their loans**
The Committee was informed that students through e-financial literacy are encouraged to start repaying while still in school. HELB indicated that it has changed the name of the unit from Debt Recovery to Debt Management.
- e. **On whether HELB does waivers**
The Committee was informed that it does waivers and 1.2B was collected in 2013 waiver, 800M collected in 2018 waiver and another 800M collected in 2021 waiver.
- f. **On how long the students have to wait before they get their loans and scholarships**
HELB indicated that it is still collecting data and the process will end on 7th of October, 2023. The Committee was told that the delay was occasioned by the challenge of data validation.
- g. **On Vice Chancellors chasing away students despite the Ministerial circular**
The Committee was informed that the Ministry had met with VC's who indicated that the ones chased were for not having paid for accommodation. The PS Higher Education indicated that some reports from the fourth estate were misleading.
- h. **On the amount of money that has been disbursed so far**
The Committee was informed that no money has so far been disbursed although the Ministry is following up the issue with the Treasury. The Ministry however indicated that three months enhanced capitation has been provided already.

MIN.NO.EDUC/2023/286: ANY OTHER BUSINESS

1. The Committee resolved that every foreign trip delegation must be accompanied by Secretariat.
2. The following Members were selected for foreign trips:
 - a. **London:** Hon. Rebecca Tonkei, Hon. Phylis Bartoo, Hon. Dick Maungu
 - b. **France:** Hon. Jerusha Momanyi, Hon. Julius Taitumu, Hon. Nabii Nabwera and Hon. Anne Muratha
 - c. **Next trip:** Hon. Julius Melly, Hon. Malulu Injendi and Hon. Peter Orero
3. The Committee resolved to begin with the Kenya Institute on Curriculum Development (KICD) on budget implementation

MIN.NO.EDUC/2023/287: ADJOURNMENT.

There being no other business, the sitting was adjourned at 1.45 pm.

SIGNED:  DATE: 31/10/2023

**HON. JULIUS MELLY, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON EDUCATION**

**MINUTES OF THE 48TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
EDUCATION HELD ON THURSDAY, 17TH AUGUST 2023, MINI CHAMBER, MAIN
PARLIAMENT BUILDINGS, AT 10:00 AM**

PRESENT

- | | |
|--|------------------------------------|
| 1. Hon. Julius Kibiwott Melly, MP | - Chairperson |
| 2. Hon. Moses Malulu Injendi, MP | - Vice-Chairperson – Session Chair |
| 3. Hon. Dr. Christine Ombaka Oduor, MP | |
| 4. Hon. Eve Akinyi Obara, MP | |
| 5. Hon. Jerusha Mongina Momanyi, MP | |
| 6. Hon. Abdul Ebrahim Haro, MP | |
| 7. Hon. Clive Ombane Gisairo, MP | |
| 8. Hon. Dick Maungu Oyugi, MP | |
| 9. Hon. Julius Taitumu M'Anaiba | |
| 10. Hon. Nabii Nabwera Daraja, MP | |
| 11. Hon. Peter Ochieng Orero, MP | |
| 12. Hon. Rebecca Noonaishi Tonkei, MP | |

ABSENT WITH APOLOGY

1. Hon. Anne Wanjiku Muratha, MP
2. Hon. (Prof.) Phylis Jepkemoi Bartoo, MP
3. Hon. Timothy Kipchumba Toroitich, MP

IN ATTENDANCE

COMMITTEE SECRETARIAT

- | | |
|---------------------------|------------------------|
| 1. Ms. Grace Wahu | - Clerk Assistant III |
| 2. Ms. Colleta Siglai | - Senior Legal Counsel |
| 3. Dr. Mburu Maina | - Research Officer III |
| 4. Mr. Nimrod Ochieng | - Audio Officer |
| 5. Mr. Paul Kashana Shane | - Serjeant-at-Arms |
| 6. Mr. Daniel Psirmoi | - Media Officer |

AGENDA

1. Prayers
2. Adoption of the agenda
3. Confirmation of Minutes of the 47th Sitting held on Tuesday, 15th August, 2023
4. Matters Arising
5. Briefing by the Legal Counsel on the following Bills:
 - a. Higher Education Loans Board (Amendment) Bill, 2022 sponsored by Hon. Joyce Kamene, MP
 - b. Higher Education Loans Board (Amendment) Bill, 2023 sponsored by Hon. Joyce Kamene, MP
 - c. Teachers Service Commission (Amendment) Bill, 2023 sponsored by Hon. Abdul Haro, MP
6. Any other Business
7. Adjournment and date of the next sitting.

MIN.NO.EDUC/2023/241: PRELIMINARIES

The Chairperson called the meeting to order at 10.18 am and Hon. Malulu Injendi said a prayer. The agenda was adopted having been proposed by Hon. Clive Gisairo, MP, and seconded by Hon. Abdul Haro, MP.

MIN.NO.EDUC/2023/2242: CONFIRMATION OF MINUTES

a. Confirmation of Minutes of the 47th Sitting held on Tuesday, 15th August 2023 at 12.00 noon.

The Minutes of the 47th Sitting were confirmed as a true reflection of the meeting having been proposed by Hon. Dick Maungu, MP, and seconded by Hon. Jerusha Momanyi, MP.

Matters Arising

1. Concerns were raised by the Members on the selection of three Members for the Paris and London trip to be undertaken by the Committee. The Chairperson informed the Committee that the number of people selected is subject to availability of funds.
2. The Committee stated that prioritization should be given to the retreat with the Ministry of Education to go through the Report on the Presidential Working Party Education Reforms in order to be appraised on the amendments in legislation.
3. The Committee deliberated that the Cabinet Secretary for Education needs to appraise the Committee on the new Funding Model. The Chairperson informed the Committee that he had posted a brief on the new Funding Model in the Committee group and requested the Members to look through it in order to understand the application process for university scholarships and loans.

MIN.NO.EDUC/2023/243: BRIEFING BY THE LEGAL COUNSEL ON THE BILLS BEFORE THE COMMITTEE

The Legal Counsel took the Committee through the Bills and the discussions were as follows: -

a. Higher Education Loans Board (Amendment) Bill, 2022 sponsored by Hon. Joyce Kamene, MP

The Committee indicated that a minor cannot get into a contract and therefore it is not possible for him or her to be a co-signatory. The Committee stated that it will not sanitize a mistake because a child should ideally join Grade One at 6 years. The new proposal was thus found to be in conflict with the law of contract.

The Committee noted that some parents take their children to school very early to evade responsibilities and they should be the ones to do funding for their children. Education should be an equalizer and the well to do should not have the liberty to enroll their children in school earlier than others and children should remain at home and allowed to be just children.

b. Higher Education Loans Board (Amendment) Bill, 2023 sponsored by Hon. Joyce Kamene, MP

The Committee noted that the sponsor is redefining terms so as to fit her legislative proposal. There was also a concern on interest rates since the new proposal indicates that the maximum interest rate, if the bill is passed, will be at most 3% which will require parliament's approval to adjust if need arises. This is despite the fact that the Board is the one charged with the responsibility of disbursement and recovery of higher education loans.

Interest rates should be a product of demand and supply and Parliament would be acting ultra vires by being allowed to set interest rates.

The Committee proposed that interest rates adjustments should be captured under HELB regulations.

c. Teachers Service Commission (Amendment) Bill, 2023 sponsored by Hon. Abdul Haro, MP

The Committee noted that the Legislative Proposal seeks to take away allowances from the regulations and place them under the Act.

It was stated that the Legislative proposal inserted unnecessary allowances such as transfer allowances yet the TSC suffers low budget. Some allowances in the Bill are already being offered by TSC.

The Committee however indicated that it has had concerns over acting allowances for teachers acting for years without being confirmed yet the acting allowances are already provided for in the Regulations. In addition, the Public Service Commission already provides for the award of allowances and the Collective Bargaining Agreements (CBAs) signed between TSC and teachers act as guides to the allowances payable.

The Committee noted that a teacher should not be appointed in an acting capacity unless the person satisfies all the prescribed qualifications.

Further, the Teachers Service Commission should continually hold promotional interviews so that acting teachers may benefit from existing promotional opportunities.

MIN.NO.EDUC/2023/244: ANY OTHER BUSINESS

There were no matters arising

MIN.NO.EDUC/2023/245: ADJOURNMENT.

There being no other business, the sitting was adjourned at 1.45 pm.

SIGNED: DATE: 12/9/2023

HON. JULIUS MELLY, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON EDUCATION

MINUTES OF THE 14TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
EDUCATION HELD ON TUESDAY, 5TH MARCH, 2024, IN COMMITTEE ROOM, 2ND
FLOOR, CONTINENTAL HOUSE, AT 10:00 AM.

PRESENT

1. Hon. Julius Melly, M.P.
2. Hon. Moses Malulu Injendi, M.P.
3. Hon. Dr. Christine Oduor Ombaka, M.P.
4. Hon. Eve Obara, MBS, M.P.
5. Hon. Jerusha Momanyi, M.P.
6. Hon. Dick Maungu Oyugi, M.P.
7. Hon. Julius Taitumu M'Anaiba, M.P.
8. Hon. Nabii Nabwera Daraja, M.P.
9. Hon. Peter Ochieng Orero, M.P.
10. Hon. Prof. Phyllis Jepkemoi Bartoo, M.P.
11. Hon. Rebecca Noonaishi Tonkei, M.P.
12. Hon. Timothy Kipchumba Toroitich, M.P.

- Chairperson

- Vice-Chairperson

APOLOGIES

1. Hon. Abdul Ebrahim Haro, M.P.
2. Hon. Anne Wanjiku Muratha, M.P.
3. Hon. Clive Ombane Gisairo, M.P.

SECRETARIAT

- | | | |
|--------------------------|---|----------------------|
| 1. Mr. Clive Onyancha | - | Clerk Assistant III |
| 2. Mr. Kimathi Timothy | - | Clerk Assistant III |
| 3. Ms. Collettah Sigilai | - | Senior Legal Counsel |
| 4. Ms. Fiona Wanjiru | - | Legal Counsel |
| 5. Dr. Mburu Maina | - | Research Officer |

AGENDA

1. Prayers;
2. Preliminaries and adoption of Agenda;
3. Confirmation of Minutes of the 12th and 13th Sitting;
4. Matters Arising;
5. Consideration of draft Reports on the following Bills:
 - i. The Higher Education Loans Board (Amendment) Bill No.58 of 2022 by Hon. Joyce Kamene, MP

- ii. The Higher Education Loans Board (Amendment) Bill No.10 of 2023 by Hon Joyce Kamene, MP
- iii. The Vocational Training Bill (Senate Bill No.3 of 2022)
- 6. Way forward for the following Bills
 - i. The Universities (Amendment) Bill, NA No.38 of 2013 by Hon. Wanami Wamboka, MP
 - ii. The Universities (Amendment) Bill, No. 3 of 2023 by Hon. Christopher Wangaya, MP
 - iii. The Learners with Disabilities (Senate Bill No. 4 of 2024)
- 7. Any Other Business; and
- 8. Adjournment and date of next sitting.

MIN. NO. 62 NA/EDUC/2024: PRELIMINARIES

The Chairperson called the meeting to order at twenty-six minutes past ten o'clock followed by the Prayer. Thereafter self-introductions were made.

MIN. NO. 63 /NA/EDUC/2024: CONFIRMATION OF PREVIOUS MINUTES

Confirmation of Minutes of the 12th sitting held on 28th February 2024.

Minutes of the 12th Sitting held on 28th February 2024 were adopted as a true reflection of the Committee deliberations having been proposed by Hon. Jerusha Momanyi, M.P. and seconded by Hon. Dick Maungu Oyugi, M.P.

Confirmation of Minutes of the 13th sitting held on 29th February 2024.

Minutes of the 13th Sitting held on 29th February 2024 were adopted as a true reflection of the Committee deliberations having been proposed by Hon. Prof. Phyllis Jepkemoi Bartoo, M.P. and seconded by Hon. Timothy Kipchumba Toroitich, M.P.

MIN. NO. 64 /NA/EDUC/2024: CONSIDERATION OF DRAFT REPORT ON BILLS

- 1. The Higher Education Loans Board (Amendment) Bill No.58 of 2022 by Hon. Joyce Kamene, MP.

The Committee having considered the report on the Higher Education Loans Board (Amendment) Bill No. 58 of 2022 by Hon. Joyce Kamene, MP. made the following observation:

Amendment to Section 2 of the Higher Education Board Act No. 3 seeks to expand the definition of a loanee to include a parent and guardian to make it possible to award a HELB loan to a student who has not attained the age of eighteen years with a parent or guardian as co-signatories to the loan. The Committee noted this proposed amendment may be in contravention of other existing laws.

The Committee instead recommended the adoption of Dr. Charles Ringera, Chief Executive Officer, HELB submission to introduce another subsection 2B as follows: 'The provisions of any

other written law notwithstanding, the contract between HELB and the applicant shall be deemed to be a contract of necessity and not voidable on account of incapacity to contract.'

The Committee further advised the Secretariat to do more research on the proposed amendments and resubmit the report for consideration.

2. The Higher Education Loans Board (Amendment) Bill No.10 of 2023 by Hon Joyce Kamene, MP

The Committee having considered the Higher Education Loans Board (Amendment) Bill No.10 of 2023 by Hon Joyce Kamene, MP adopted the report as a true reflection of the Committee deliberations having been proposed by Hon. Dick Maungu Oyugi, M.P. and seconded by Hon. Jerusha Momanyi, M.P.

3. The Vocational Training Bill (Senate Bill No.3 of 2022)

The Committee advised the Secretariat to incorporate all recommendations and resubmit the report for consideration.

MIN. NO. 65 /NA/EDUC/2024: WAY FORWARD FOR THE FOLLOWING BILLS

1. The Universities (Amendment) Bill, NA No.38 of 2013 by Hon. Wanami Wamboka, MP

The Committee proposed the report be submitted to the Committee for consideration and adoption.

2. The Universities (Amendment) Bill, No. 3 of 2023 by Hon. Christopher Wangaya, MP

The Committee proposed the report be submitted to the Committee for consideration and adoption.

3. The Learners with Disabilities (Senate Bill No. 4 of 2024)

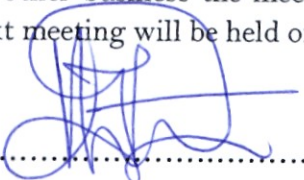
The Committee proposed the report be submitted to the Committee for consideration and adoption.

MIN. NO. 66 /NA/EDUC/2024: ANY OTHER BUSINESS

There was no other business.

MIN. NO. 67 /NA/EDUC/2024: ADJOURNMENT

There being no other business the meeting was adjourned at thirty-two minutes past eleven O'clock. The next meeting will be held on Notice.

SIGNED:  DATE: 12/03/2024

**HON. JULIUS MELLY, CBS, MP,
CHAIRPERSON**

Annexure 3: Copy of Newspaper advertisements on public participation.



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - SECOND SESSION (2023)

IN THE MATTER OF ARTICLE 118 (1) (b) OF THE CONSTITUTION
AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

1. THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2023);
2. THE KENYA NATIONAL LIBRARY SERVICES BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2023);
3. THE NATIONAL DISASTER RISK MANAGEMENT BILL (NATIONAL ASSEMBLY BILL NO. 24 OF 2023);
4. THE CLIMATE CHANGE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2023); AND
5. KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 52 OF 2022)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

WHEREAS, the Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 10 of 2023); the Kenya National Library Services Bill (National Assembly Bill No. 20 of 2023); the National Disaster Risk Management Bill (National Assembly Bill No. 24 of 2023); the Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023) and the Kenya Information and Communications (Amendment) Bill (National Assembly Bill No. 52 of 2022) were read a First Time on Wednesday 9th August, 2023 and referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

1. **The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 10 of 2023)** is a Bill sponsored by **Hon. Joyce Kamene, MP** which seeks to amend the Higher Education Loans Board Act, No. 3 of 1995 to waive the imposition of interest on the principal amount of a loan advanced to the youth and person with disabilities until such time as they have secured their first employment. The Bill further sets the percentage of interest that may be charged on the loan advanced at 3% and provides that the penalty charged on defaulting of the loan shall be charged after securing employment or five (5) years after completion of studies. The aim of these proposals is to reduce the financial burden on recent graduates who are expected to pay large sums of money to the Higher Education Loans Board even before securing employment or becoming financially stable.
2. **The Kenya National Library Services Bill (National Assembly Bill No. 20 of 2023)** is a Bill sponsored by **Hon. Danial Wanyama Sitati, MP** which seeks to give effect to Article 11 (2) (a) of the Constitution which mandates the State to promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage.
3. **The National Disaster Risk Management Bill (National Assembly Bill No. 24 of 2023)** is a Bill sponsored by **Hon. Kimani Ichung'wah, MGH, MP, the Leader of the Majority Party** which seeks to provide a legal framework for the co-ordination of disaster risk management activities in both levels of government by establishing an intergovernmental Council on Disaster Risk Management and the National Disaster Management Authority to ensure co-ordination of disaster risk management issues. The Bill approaches disaster risk management in a manner that seeks first to respond effectively in a timely manner to any disaster and prevent the adverse effect of a disaster.
4. **The Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023)** is a Bill sponsored by **Hon. Kimani Ichung'wah, MGH, MP, the Leader of the Majority Party** which seeks to amend the Climate Change Act, 2016 to provide for the regulation of the carbon markets.
5. **Kenya Information and Communications (Amendment) Bill (National Assembly Bill No. 52 of 2022)** is a Bill sponsored by **Hon. Elisha Odhiambo, MP** which seeks to amend the Kenya Information and Communication Act, 1998 to enable persons operating a telecommunication system or providing a telecommunication service to engage in any other business and provide for separation of such other business from telecommunication business. The amendments introduce a regulatory framework that requires licensed entities to report their compliance to the Communication Authority and prescribe a penalty for non-compliance. The amendment will aid in control of anti-competitive practice within the telecommunications sector.

THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees listed below:

BILL	COMMITTEE
1. The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 10 of 2023)	Education
2. The Kenya National Library Services Bill (National Assembly Bill No. 20 of 2023)	Sports and Culture
3. The National Disaster Risk Management Bill (National Assembly Bill No. 24 of 2023)	Regional Development
4. The Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023)	Environment, Forestry and Mining
5. Kenya Information and Communications (Amendment) Bill (National Assembly Bill No. 52 of 2022)	Communication, Information & Innovation

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to ena@parliament.go.ke to be received on or before Tuesday 22nd August, 2023 at 5.00 p.m.

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
16th August, 2023

"For the Welfare of Society and the Just Government of the People"



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY**THIRTEENTH PARLIAMENT - SECOND SESSION (2023)**

**IN THE MATTER OF ARTICLE 118 (1) (b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:**

1. **THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2023);**
2. **THE KENYA NATIONAL LIBRARY SERVICES BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2023);**
3. **THE NATIONAL DISASTER RISK MANAGEMENT BILL (NATIONAL ASSEMBLY BILL NO. 24 OF 2023);**
4. **THE CLIMATE CHANGE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2023); AND**
5. **KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 52 OF 2022)**

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

WHEREAS, the Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 10 of 2023); the Kenya National Library Services Bill (National Assembly Bill No. 2023); the National Disaster Risk Management Bill (National Assembly Bill No. 24 of 2023); the Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023) and the Kenya Information and Communications (Amendment) Bill (National Assembly Bill No. 52 of 2022) were read a First Time on **Wednesday 9th August, 2023** and referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

1. **The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 10 of 2023)** is a Bill sponsored by **Hon. Joyce Kamene, MP** which seeks to amend the Higher Education Loans Board Act, No. 3 of 1995 to waive the imposition of interest on the principal amount of a loan advanced to the youth and person with disabilities until such time as they have secured their first employment. The Bill further sets the percentage of interest that may be charged on the loan advanced at 3% and provides that the penalty charged on defaulting of the loan shall be charged after securing employment or five (5) years after completion of studies. The aim of these proposals is to reduce the financial burden on recent graduates who are expected to pay large sums of money to the Higher Education Loans Board even before securing employment or becoming financially stable.
2. **The Kenya National Library Services Bill (National Assembly Bill No. 20 of 2023)** is a Bill sponsored by **Hon. Danial Wanyama Sitati, MP** which seeks to give effect to Article 11 (2) (a) of the Constitution which mandates the State to promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage.
3. **The National Disaster Risk Management Bill (National Assembly Bill No. 24 of 2023)** is a Bill sponsored by **Hon. Kimani Ichung'wah, MGH, MP, the Leader of the Majority Party** which seeks to provide a legal framework for the co-ordination of disaster risk management activities in both levels of government by establishing an intergovernmental Council on Disaster Risk Management and the National Disaster Management Authority to ensure co-ordination of disaster risk management issues. The Bill approaches disaster risk management in a manner that seeks first to respond effectively in a timely manner to any disaster and prevent the adverse effect of a disaster.
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NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees listed below:

BILL	COMMITTEE
1. The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 10 of 2023)	Education
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The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to cha@parliament.go.ke to be received on or before **Tuesday 22nd August, 2023 at 5.00 p.m.**

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
16th August, 2023

"For the Welfare of Society and the Just Government of the People"

Annexure 4: Submissions by Stakeholders

KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"

Telegrams: "LAWREFORM" NAIROBI Telephone:

Nairobi, +254-20-2241186/2241201 Fax:

+254-20-2225786

www.info@klrc.go.ke

When replying please quote

Ref: IKLRC/8./6.4JV01..IX.(6.0) ...
and Date

KENYA LAW REFORM COMMISSION
REINSURANCE PLAZA
3RD FLOOR TAIFAROAD
P.O. Box 34999-00100 NAIROBI, KENYA

12 September, 2023

..... 20

The Clerk.
Clerks Chambers
National Assembly
Parliament Buildings
P O Box 41842 - 00100
NAIROBI

(Attn. Peter K. Chemweno)

Dear

RE.: COMMENTS. ON THE PROPOSED HIGHER EDUCATION LOANS BOARD
(AMENDMENT) BILL, 2023 AND THE HIGHER EDUCATION (AMENDMENT) LOANS BOARD
BILL, 2022 BOTH BY HON JOYCE KAMENE

We acknowledge with thanks receipt of your letter Kef.NA/FDU202313) dated 6th September, 2023
on the above subject.

Introduction

The Kenya Law Reform Commission has been requested vide a letter dated 6th September, 2023 from the Clerk of the National Assembly to make representations on the Higher Education Loans Board (Amendment) Bill, 2022 and the Higher Education Loans Board (Amendment) Bill, 2023 which have undergone First Reading in the House and thereafter committed to the Departmental Committee on Education for review and reporting.

The Commission has examined the legislative proposals and gives the following comments.

1. The Higher Education Loans Board (Amendment) Bill, 2023

Objects of the Bill

This Bill proposes to amend the Higher Education Loans Board Act, No. 3 of 1995 to waive the imposition of interest on the principal amount of a loan advanced to the youth and persons with disability until such a time as they have secured their first employment.

The Bill further sets the percentage of interest that may be charged on the loan advanced at three percent and provides that penalty for defaulting on loan may only be charged after securing employment or five years after completion of studies.

Comments on the Bill

Statute	Section/ Proposed KLRC Proposal Amendment	Rationale
The Higher Education Loans Board Act, No. 3 of 1995.	Section 2. Inserting new definitions for the terms 'disability' and 'youth'.	There would be no harm to have these 'disability' and 'youth' given in the definitions Bill are a replicate of the definitions dropped as they of those terms as contained in are already defined Article 260 of the Constitution of in the Constitution. Kenya. 2010.
	Section 6. Removing power to set interest rates on loans.	NOT in agreement. The Board currently administers student loans at an interest rate of four per centum per annum for undergraduate and TVET students whose repayment is deferred until after graduation. It also funds the salaried undergraduate and postgraduate students who repay the loans as they study through the Jielimishe Loan product at 10% per annum. This amendment would limit the Board's power to vary interest rates depending on the prevailing market conditions and the performance of the revolving fund. Further salaried applicants may not be too needy as to require such an incentive.
	Section 15. Insertion of a new subsection abolishing charging of interest on loans advanced to _____ L.	In agreement. This gives youth and persons living with disability an opportunity to commence paying their loans without having the loans accrue huge amounts in interest.

youth and persons
with disability until
they have secured
employment.

Section 15.

In agreement.

Suspends payment of
fines on loans until
upon securing
employment or within
five years after
completion of his
studies.

Within five years of completion of studies
could mean any period before the specified
period of five years ends. This gives youths
and persons living with disability a grace
period to secure employment or venture
into business before commencing the
repaying the loans. It also prevents this
class of

loanees from being heavily
indebted at the time of
commencing the repayment of the
loans.

Section 14.

Not in agreement.

Sets the maximum
interest rate on
amount advanced by
the Board to a loanee
at not more than three
per centum per
annum.

The amendment covers the
administration of undergraduate and TVET
student loans which are currently at 4%
and those for the salaried undergraduate
and postgraduate students which are
currently at 10%. Salaried undergraduate
and postgraduate students could be in a
position to easily afford the loans. The
amendment should indicate whether it
applies to only needy undergraduate and
TVET students or to salaried students
pursuing undergraduate and postgraduate
studies as well.

2. The Higher Education Loans Board (Amendment) Bill, 2022

Objects of the Bill

This Bill proposes to amend the Higher Education Loans Board Act, No. 3 of 1995 to prohibit the Higher Education Loans Board from denying loans to students who have not attained the age of eighteen years.

Comments on the Bill

The Education Statute	Section/ Proposed Amendment	KLRC Proposal	Rationale
Higher Education	Section 14.	In agreement.	Even though the Board may not enter into contract with minor, innovative

Loans Board Act, No 3 of 1995. Insertion of new subsection prohibiting the Board from denying loans to persons who have not attained the age of eighteen years.

means need to be devised to ensure that needy but underage applicants get access HELB loans. This will prevent needy persons who haven't attained the age of eighteen years from being locked out of loans advanced to support their higher education.

Section 14. In agreement.

Contracts with minors are voidable they cannot be specifically enforced against the minor.

Insertion of new subsection to provide that loan applications by minors be co-signed by a parent or guardian.

However, parents or guardians of minors can name them in contracts only if it benefits them. But even in this case, the minor cannot be personally liable. Additionally, minors may not ratify a contract upon attaining age of majority unless a law specifically allows this.

Conclusion

The amendments as proposed in the two Bills will give minors an opportunity to benefit from the loans available to those pursuing higher education. The amendments will also make the loans cheaper as interest payable on them is now capped at three per centum per annum however it should be made clear whether this applies to salaried applicants pursuing undergraduate and postgraduate studies as well. Youths and persons living with disability get a grace period within which to begin paying their loans which ensures that the loans do not accumulate penalties as to make them heavily indebted.

As always, we thank you for your continued cooperation.

Yours *Sincerely,*



Joash Dache, MBS
SECRETARY/CEO

Copy to: Ms. Christine Agimba, Chairperson to see file copy



**OFFICE OF THE ATTORNEY-GENERAL AND
DEPARTMENT OF JUSTICE**

**SUBMISSION BY THE OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF
JUSTICE ON THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL, 2022, AND THE
HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL, 2023, LEGISLATIVE PROPOSAL
BEFORE THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON EDUCATION**

We note that the Higher Education Loans Board (Amendment) Bill, 2022 and the Higher Education Loans Board (Amendment) Bill, 2023 before the National Assembly Departmental Committee on Education seek to amend the Higher Education Loans Board Act. The Bills are sponsored by Hon. Joyce Kamene, MP

We further note that the Higher Education Loans Board Act No. 3 of 1995 provides for the establishment of a Board for the management of a Fund to be used for granting loans to assist Kenyan students to obtain higher education at recognized institutions within and outside Kenya and for matters incidental thereto and connected therewith

We have reviewed the two legislative proposals and wish to comment as follows:

A. The Higher Education Loans Board (Amendment) Bill, 2022

1. Clause 2 of the Bill seeks to amend section 14 of the Act which provides for conditions for grant of loan by inserting new sub sections immediately after subsection (2) to mandate the board to approve applications by persons under the age of 18 as long as the parents and guardians of the applicant cosign the loan.

4. This proposal though beneficial as it gives access to loans to beneficiaries in institutions of higher education who have not attained the age of majority, may create challenges in the implementation as a minor (a person under the age of 18 years) may not have capacity to enter into a legally binding contract and also can't open a bank account to where the funds can be channeled. Thus the contracts may be challenged in a Court of law.
3. The proposal may be amended to consider having the guardians as applicants until the minor becomes of age then the applicant can regularize the application.

B. The Higher Education Loans Board (Amendment) Bill, 2023

4. Clause 2 of the Bill seeks to amend section 2 of the Act relating to interpretation of terms by introducing the definition of additional terms into the interpretation section namely the definition of "disability" and "youth".
5. This proposal is unnecessary as both terms are defined adequately in other pieces of legislation. The term disability is defined in the persons with disability Act and the term "youth" is defined in the Constitution. We propose for the definitions to be withdrawn or if inserted for the Act to make a cross reference to main legislation that defines these terms.
6. Clause 3 of the Bill seeks to amend section 6 of the Act which provides for the functions of the Board. The proposal seeks to remove from the Board, the function of setting the rate of interest for loans granted under the Act. The Board will thus not be responsible for setting the interest rates to be charged on the higher education loans granted under the Act.
7. This proposal may pose a challenge in implementation as it is not clear who will be mandated to set the interest rate to be charge on loans issued under the Act.
8. Clause 4 of the Bill seeks to amend section 15 of the Act which sets out the obligation of loanees. The amendment proposes to insert a new subsection which seeks to provide that the loans advanced to the youth and persons with disabilities shall not accrue for as long as these persons have not secured employment. The proposal seeks

to have the interest on the loans to only accrue from the time these persons get employment. Further the amendment under subsection (2) seeks to ensure that in as much as loan beneficiaries are required under the Act to start repayment of the loan within one year of completion of studies, failure to do so shall not constitute an offence, the loan beneficiary only commits an offence where he fails to start the loan repayment either upon securing employment or within five years after completion of studies.

9. The proposal may affect the effective operations of the Fund as the disbursements rely on loan repayment/recovery as a major component of resource mobilization. Further, a majority of the loanees complete university at the age between 22 and 25 years thus a proposal to waive interest for the youth is likely to hand over interest loans to majority of the beneficiary thus affecting the resources in the fund. This will in turn lead to over reliance on exchequer.
10. Clause 5 of the Bill proposes the insertion of a new section 14A which seeks to expressly set a maximum interest rate of three per centum (3%) that can be charged by the Board on the loans issued under the Act. This proposal is tied to the amendment in section six which sought to remove the function of setting interest rates from the Board.
11. Although the provision does not raise any significant constitutional issues, noting the ever growing inflation rate in the economy it may be necessary to leave the setting of interest rates open as provided in section 6 so as to cater for the rising cost of inflation. Further if this provision is retained and there is need to revise the interest rate, the Act will need to be amended to reflect the new interest rates. We recommend for the provision to be deleted and the proposed amendment to section 6 be deleted.
12. From the foregoing, we note that though the legislative proposal does not raise significant constitutional issues we propose for the same to be withdrawn as the proposals may have serious implications on the continuity of the Fund.
13. We also consulted the Ministry and the ministry noted that it is in the process of developing a Bill which will merge the Funds under the University Act and Technical

and Vocational Education and Training Act with the Higher Education Loans Board Act and the proposed bill will repeal the Higher Education Loans Board Act.

14. We further note that the legislative proposal contains similar proposals as in the Higher Education Loans Board (Amendment) Bill, 2022 (National Assembly Bill No. 29) sponsored by Hon. Gideon Keter, MP, which the Departmental Committee on Education and Research in their report dated 10 August 2021, recommended for the Bill not to proceed and for the sponsor of the Bill to consider withdrawing it.

Olivia Simiyu

Senior Parliamentary Counsel

FOR: ATTORNEY GENERAL

12"September, 2023



HIGHER EDUCATION LOANS BOARD

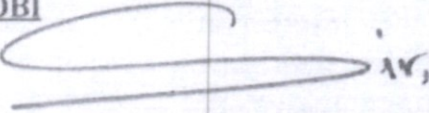
Tel: 0711052000
E-mail: contactcentre@helb.co.ke
Website: www.helb.co.ke

Anniversary Towers
University Way
P.O Box 69489-00400
Nairobi, Kenya

HELB/ 46/001/Vol.2/32

11th September 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
Parliament Buildings
P.O Box 41842-00100
NAIROBI

Dear 

RESPONSE TO HON. JOYCE KAMENE BILL 2022 ON PROPOSED AMENDMENTS TO HELB ACT

HON. JOYCE KAMENE BILL 2023 ON PROPOSED AMENDMENTS TO HELB ACT

The Bill proposes four amendments on Higher Education Loans Board Act, CAP 213A, as highlighted below:-

Definition

Include definition of "Youth and Disability" within HELB Act.

Power to Set Interest Rate

The function of the Board of setting interest rate is taken away.

Youth and Persons with Disabilities (PWD)

To waive the imposition of interest on the principal amount of a loan advanced to the Youth and Persons with Disabilities (PWD) until they secure employment.

Penalty Charged

The penalty charged upon defaulting in loan repayment should be charged after the loanee secures employment or five years after completion of studies.

Maximum Interest Rate

The percentage of interest that may be charged on the loan advanced to be fixed at not more than three (3%) per cent p.a.

Principal Object for Proposed Amendments

The rationale of the proposed amendments is to reduce the financial burden on fresh graduates who are expected to pay money to the Higher Education Loans Board in terms of interest and penalties even before securing employment or becoming financially stable.

Proposed Bill

Clause 1 provides for the short title.

Clause 2 provides for amendment to section 2 of the HELB Act to insert the definitions of the terms "disability" and "youth" which are used in the proposed amendments.

Clause 3 provides for the amendment of section 6 of the HELB Act to remove the function of setting the rate of interest from the Board.

Clause 4 provides for the amendment of section 15 of the HELB Act by

inserting a new subsection that provides that interest in cases of the Youth and Persons with Disabilities, their loan repayment shall become due upon them securing employment after completion of their studies.

Clause 5 provides for the insertion of a new section that sets the rate of interest charged on the loans at a maximum of three (3) per cent per annum. It also provides that the penalty charged upon defaulting in loan repayment shall be charged after securing employment or five years after completion of studies.

Attached is a comparison of the current provisions of the Act and the changes proposed by the Bill.

Current Provision	Proposed Amendments	Implication	HELB Comment
Section 2 of HELB Act, which provides for interpretation.	Section 2 of the HELB Act (herein after referred to as the Principal Act is amended by inserting the following new paragraph in their proper alphabetical sequence- Youth" means the collectivity of all individuals in the Republic who: - a) Have attained the age of eighteen years; but b) Have not attained the age of thirty-five years. "Disability "includes any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day-to-day activities.	It introduces the definition of disability and youth.	Disagree. The proposal is not necessary because Article 260 of the Constitution, which is the Supreme Law, has already provided the definition of Youth in the same terms as being proposed. Other than the few employed postgraduate students who opt to take HELB loans, and their loans are recovered as they study, over 95% of HELB loan beneficiaries, are under the category of the youth. This means if they are given any preferential treatment, then the entire undergraduate group benefits. Persons With Disability Act, 2003 which is the reference law when dealing with Persons with Disabilities, gives the definition of disability exactly in the same terms as the proposal being made.
Section 6 Functions of the Board. The functions of the Board shall be a)... b)... c) to set the criteria and conditions governing the granting of loans including the rate of interest and recovery of loans.	Section 6 of the Principal Act is amended in paragraph (c) by deleting the words "rate of interest and" appearing immediately before the word "recovery".	The proposal takes away from HELB, the function of setting interest rate	Disagree. The function of setting interest rate should be left with the Board as it is best placed to monitor performance of the revolving fund and its sustainability and impact in financing higher education.

Obligations of the Loanee Section 15. A loanee shall be required, subject to and in accordance with this Act or any regulations made thereunder, within one year of completion of his studies or within such a period as the Board decides to recall its loan whichever is the earlier— a).... b) to begin repayment of his loan together with any interest accrued thereon.	Section 15 of the principal Act is amended- (a) by inserting the following new subsection immediately after subsection (I) – “(IA) Notwithstanding the provisions of subsection (I) (b), no interest shall be charged on the principal amount advanced to the youth and persons with disabilities until they have secured their first Employment upon completion of studies”.	Loan interest in cases of the youth and persons with disabilities shall be charged upon them securing employment after completion of their studies.	Disagree The Amendment will affect the entire undergraduate groups as and when they complete their studies. Persons with Disabilities have an added advantage over other students with their higher education being fully funded in terms of loan. They are not subjected to the means testing instrument requirement. Further, most of them benefit from the National Council of Persons with Disabilities (NCPWD) who supplement their higher education financing. It will therefore not be tenable to waive the interest on account of their status. Further, the 4% p.a. interest charged is way below the annual inflation rate (7.3%) as at July 2023 and 8.87% over the last ten years. There is no mechanism of determining what constitutes employment, when one is deemed to be employed and how to communicate to HELB information that one is now employed. Interest earned goes towards financing other needy students and for the period that it's not forthcoming, in the absence of more capitation from the National Treasury, less students will be financed.
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Section 15 (2) Any loanee who fails or neglects to satisfy the requirements of subsection (1) within the stipulated time shall, in addition to any other action that the Board may take against him, be guilty of an offence and liable to a fine of not less than five thousand shillings in respect of each loan deduction that remains unpaid in accordance with provisions of subsection (1), and such fine shall be payable to the Board.	Section 15 section (2) be amended by deleting the words " within the stipulated time" appearing immediately after the words " subsection (1)" where they first appear and substituting therefor the words " upon securing employment or within five years after completion of studies".	A loanee shall be liable of the offence under sub-section (2) and penalty thereof upon securing employment or after five years from the time of completion of studies.	Disagree Loan repayment is key to HELB's mandate of creating a revolving fund for the benefit of other deserving student. Extending the grace period to five years will mean funding less students because income from loan repayment goes towards funding other needy students. A judgement delivered on 19th August 2022 by Justices Alfred Mabeya, of the High Court of Kenya fixed HELB interest and penalties charged, in that the maximum that HELB can charge on penalties and interest is limited to equal to the principal amount as at the time of default. Penalties are imposed to deter default while interest is for partial cost of the cost of the cost of lending. If they are delayed for that long, most of beneficiaries will take advantage of the provision and fail to repay even when they are able.
A new Section	<i>Interest rate.</i> 14(A). The maximum interest rate to be charged by the Board on the principal amount advanced to a loanee shall not be more than three per cent per annum.	The provision sets the maximum interest rate at 3%.	Reviewing the interest rate downwards and the proposed delay in repayments will have an adverse impact in terms of cashflows to fund students where currently 37% of student loan budget is from AIA (Loan Recoveries). It means HELB would need more capitation from the National Treasury to make up for the loss in interest.

			Reducing the current rate to 3% will negatively impact on the revolving fund hence negatively affecting HELB's ability to finance needy students, given that the current 4% is already way annual inflation rate. The interest rate is currently set by the Board as it is one of its functions. The Board has not in any way mismanaged this function. Providing for it in law means that Parliament has to legislate on any change as and when required.
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