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NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

REPORT ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2015

CLERK'S CHAMBERS,  
DIRECTORATE OF COMMITTEE SERVICES,  
PARLIAMENT BUILDINGS  
NAIROBI

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V.29

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## ABBREVAITIONS

CARB	-	County Allocation of Revenue Bill
CCK	-	Communications Authority of Kenya
CoB	-	Controller of Budget
CoG	-	Council of Governors
CRA	-	Commission on Revenue Allocation
CS	-	Cabinet Secretary
DoRB	-	Division of Revenue Bill
IBEC	-	Intergovernmental Budget and Economic Council
KAA	-	Kenya Airports Authority
PBO	-	Parliamentary Budget Office
PIN	-	Parliamentary Initiative Network
TSA	-	Treasury Single Account

## 1.0 PREFACE

It is my pleasure to present the Report of the Departmental Committee on Finance, Planning & Trade on its consideration of the Public Finance Management (Amendment) Bill, 2015. The Bill was committed to the Committee on 4<sup>th</sup> March, 2015 and it is on the basis of this that the Committee makes this Report pursuant to Standing Order 127.

### 1.1 Mandate

The Committee on Finance, Planning & Trade is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to:

- (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- (b) study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.
- (c) study and review all legislation referred to it.;**
- (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;
- (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- (g) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

### 1.2 Membership

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

1. The Hon. Benjamin Langat, MP (**Chairman**)
2. The Hon. Nelson Gaichuhie, MP (**Vice Chairman**)
3. The Hon. Jones M Mlolwa, MP
4. The Hon. Anyanga, Andrew Toboso, MP
5. The Hon. Timothy M .E. Bosire, MP
6. The Hon. Ahmed Shakeel Shabbir Ahmed, MP
7. The Hon. Joash Olum, MP
8. The Hon. Dr. Oburu Oginga, MP
9. The Hon. Patrick Makau King'ola, MP
10. The Hon. Abdullswamad Sheriff, MP

11. The Hon. Sumra Irshadali, MP
12. The Hon. Ogendo Rose Nyamunga, MP
13. The Hon. Iringo Cyprian Kubai, MP
14. The Hon. Dennis Waweru, MP
15. The Hon. Tiras N. Ngahu, MP
16. The Hon. Sakaja Johnson, MP
17. The Hon. Jimmy Nuru Angwenyi, MP
18. The Hon. Ronald Tonui, MP
19. The Hon. Mary Emase, MP
20. The Hon. Joseph Limo, MP
21. The Hon. Lati Lelelit, MP
22. The Hon. Kirwa Stephen Bitok, MP
23. The Hon. Sammy Mwaita, MP
24. The Hon. Daniel E. Nanok, MP
25. The Hon. Eng. Shadrack Manga, MP
26. The Hon. Abdul Rahim Dawood, MP
27. The Hon. Sakwa John Bunyasi, MP
28. The Hon. Alfred W. Sambu, MP
29. The Hon. Sammy Koech, MP

### **1.3 Processing of the Bill**

On 12<sup>th</sup> February 2015, the Public Finance Management (Amendment) Bill, 2015 was published and read a First Time on 4<sup>th</sup> March, 2015 and thereafter committed to the Departmental Committee on Finance, Planning & Trade for consideration pursuant to Standing Order 127. In processing the Bill, the Committee invited comments from the public by placing the advertisements in the Daily Nation and Standard newspapers on 4<sup>th</sup> March, 2015 pursuant to Article 118 of the Constitution.

The Committee received memoranda from the Council of Governors and the Parliamentary Initiative Network (PIN) proposing amendments to the Bill and also to the Principle Act. Considering that the Public Finance Management (Amendment) Bill, 2015 is a money Bill within the meaning of Article 114 of the Constitution, the Committee was obligated to engage the National Treasury during the processing of any proposed amendments. Towards this end, the Committee met with the National Treasury as the initiator Ministry and also in fulfillment of Article 114 of the Constitution.

### **1.4 key provisions of the bill**

The main object of the Bill is to amend the principle Act for smooth implementation and ensure prudent management of public resources. Specifically, the Senate Finance Committee will be

recognized in budget making process; make it mandatory for parliamentary involvement whenever counties are declaring county corporation; operationalize Treasury single accounts (Clause 33); authorize withdrawal of Funds from the Consolidated Fund in the unlikely event that Parliament may not have passed the requisite laws by the start of each financial year; to provide the timelines of surrendering un spent appropriations by counties at the end of the financial year; and expanding the mandate of the Parliamentary Budget Office to building capacities of counties among other clean ups/ editorials.

### **1.5 Stakeholders' concerns**

Though the Bill will smoothen implementation of the Public Finance Management Act, here are some of the reservations from the stakeholders:-

- (a) The Parliamentary Budget Office may not have enough personnel to implement the extended mandate of building capacities of budgeting scrutiny within the county assemblies;
- (b) The Bill anticipates a scenario where Parliament will not have passed the requisite laws by the start of a financial year and therefore proposes express permission to the National Treasury to withdrawal funds from the consolidated Fund without Parliamentary approval. This is a pessimistic way of legislating to anticipate that Parliament will not have done its work. In any case, the Constitution provides on what should be done in the vent of such scenario to provide for the essential services;
- (c) The Council of Governors opposed implementation of Treasury Single Account;
- (d) The Council of Governors opposed the involvement of Parliament in declaration of entities as county government entity; and
- (e) The surrender of un spent appropriations at the end of the financial year was opposed by the council of Governors

The Committee is in the process of considering amendments with a view to introducing them during the Committee stage of the Bill.

### **1.6 Acknowledgement**

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings. The Committee wishes to thank all the stakeholders for their participation in scrutinizing the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this Report.

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Finance, Planning & Trade, to table its Report in the House on the consideration of the Public Finance Management (Amendment) Bill, 2015 for consideration pursuant to Standing Order 127

Signed  Date 12-11-2015

**HON. BENJAMIN LANGAT, MP**

**CHAIRPERSON,**

**DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE**

## CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL 2015

### 2.0 INTRODUCTION AND KEY ISSUES

- i. The Bill proposes to amend various Sections of the Public Finance Management Act to ensure its smooth implementation and management of public finances.
- ii. The Bill proposes to amongst others address the following issues in the Principal Act:
  - a. Introduce the definition of “government to government loan”.
  - b. Recognize the mandate of the Senate Budget and Finance Committee in overseeing County Governments on budget.
  - c. To make it clear that it is only Parliament that can approve public debt level for both National and County Governments.
  - d. To outline that it is the National Treasury that will specify accounting procedures and systems in management of Parliamentary Fund.
  - e. To reduce Quarterly budget review reports to three reports annually.
  - f. To remove the requirement that the National Assembly’s authorization to withdraw money from the Consolidated Fund when the Appropriation Act has not been enacted.
  - g. To provide that the Controller of Budget will receive written instructions from the National Treasury in order to approve withdrawals from the Consolidated Fund, of monies to the County Governments, pending enactment of the Division of Revenue Bill (DoRB) and County Allocation of Revenue Bill (CARB).
  - h. To provide that the Attorney General will issue the Controller of Budget with the certificate authorizing the release of funds from the Consolidated Fund for payment of loan guarantees.
  - i. Involvement of the Cabinet Secretary in the management of state-linked corporations in addition to state corporations.
  - j. To provide that the County Revenue Fund to be kept in Central Bank of Kenya only and not in any other bank.
  - k. To provide that the County Assembly is allowed to make up to 10% adjustments to the annual estimates with regard to the Vote Ceilings as approved by the County Assembly.
  - l. To provide that the County Executive Committee Member for finance will submit approved budget estimates within 2 weeks after approval.
  - m. Suspension of the requirement for the County Assembly’s authorization to withdraw money from the County Revenue Fund when the Appropriation Act has not been enacted
  - n. To increase the period the receiver of county revenue reports tax waivers and variations to the assembly from 2 months to 3 months after the end of the financial year.

- o. To provide that the County Executive Committee Members to be involved in monitoring the financial performance of the government-linked corporations.
- p. To remove the term limit of the Intergovernmental Budget and Economic Council membership.

## 2.0 CLAUSE S ANALYSIS

### CLAUSE 2

This Clause proposes to introduce/amend the following definitions:

- (i) Inclusion of the “state organ” in the definition of a “national government entity” to make it clear that state organs also fall within the meaning of the national government entities.
- (ii) Insertion of the word “Funds” immediately after the word “draws” in the definition of the “Treasury single account” so as to specify that it is the funds that are being drawn from the two Funds (County and National Government Funds)
- (iii) To introduce a new definition of “government to government loan”. The definition of government to government loan includes among others, a financial institution that is an intermediary between the government and exporters.

*(The Committee was concerned with this amendment on the grounds that this may potentially open a situation where some institutions of questionable credentials will be involved in lending to government).*

### CLAUSE 3

- (i) This Clause amends Section 5 of the principal act so as to bring on board parliamentary approval alongside that of the County Assemblies in the process of declaring a county authority, corporation or any other body as a county government entity.
- (ii) This Clause also amends subsection 4 to bring on board County Executive Committee approval in the gazette of county government entity declared.

As drafted, the Clause presupposes that Parliament will involve both the National Assembly and the Senate. Parliament should be involved in any declaration by county government on a public entity to be county government entity. If left without parliamentary involvement, county governments can declare state corporations to be county government entities especially for devolved functions. It will also ensure any declaration of public entity is aligned to national policy objectives.

*(Both the Council of Governors and the Parliamentary Initiatives Network was opposed to these amendments and proposes deletion of Clause 3. The two bodies are of the view that the role of Parliament should be limited to a general oversight role of the funding transferred to counties from the National government and not decisions of individual counties)*

### CLAUSE 4

- (i) This Clause proposes to amend Section 8 of the principal act by recognizing the role of the senate finance and budget committee in overseeing county governments as

provided for in the Constitution (Article 189). The Senate plays an important oversight role over County Governments which appears to have been ignored in this subsection .

- (ii) The Clause also proposes that the Cabinet Secretary for Finance should be consulted by the Senate finance, budget and appropriation Committee in the process of carrying out its oversight role. This will enable the senate to comprehend the implications/explanations of moving resources from one County to another vis-a-vis the proposals made by the Cabinet Secretary in the County Allocation of Revenue Bill.

#### **CLAUSE 5**

This Clause widens the responsibilities of the Parliamentary Budget Office (PBO) to include building capacities of county assemblies in budget analysis alongside other functions outlined in the Act and the scheme of service of the PSC. It is important to obligate the Budget Office to do this if county assemblies request for this assistance.

*(This amendment was opposed by the Parliamentary Initiative Network on the grounds that this amendment may overload the responsibilities of the PBO. To undertake the support regularly, the PBO may need to expand its own capacity and budget to be able to accommodate these requests.*

*It is also the case that currently, there are many different bodies offering support to Assemblies in an uncoordinated and possibly ineffective fashion. Adding another body without creating proper structures may not yield much impact. It may be preferable for Assemblies to have to make a formal request explaining the other sources of support they are receiving and why specifically the PBO is being asked to step in)*

#### **CLAUSE 6**

The Clause proposes to amend Section 13 sub-Section one of the principal Act to correct some editorial mistakes –the Cabinet Secretary cannot delegate to him/herself. It also make it clear that it is “financial management” and not “financial” alone as provided in the Act.

*(The Clause also provides that the National Treasury can designate any person to perform any of its powers and responsibilities. It is however not clear which persons can be designated to perform these functions.)*

#### **CLAUSE 7**

This Clause proposes to amend Section 15 of the Act to:

- (i) To remove the requirement that counties should allocate at least 30% of their annual budget to development expenditure.
- (ii) To remove the county assemblies’ involvement in debt management thus leaving it to parliament alone.

This Section is dealing with the National Treasury and National Government. The inclusion of the County Governments here is unnecessary because the responsibility for County Treasuries to do the same is provided in Section 107.

## CLAUSE 8

This Clause proposes to amend Section 17 of Act so as to:

- (i) Reduce the period of disbursement of funds to counties from quarterly to monthly. This amendment will ensure that the National Treasury will be able to comply with the law since disbursements are dependent on revenue performance from time to time.

*(The Parliamentary Initiative Network is opposed to this amendment on the grounds that this is a repetition exercise. The same amendments were passed in the PFM amendment Act of 2014)*

- (ii) Change the gazette date of a schedule for disbursement of county funds from 30<sup>th</sup> May to 15<sup>th</sup> June annually. This will synchronize the time lines provided in Section 127.

*(While the amendment is necessary, the Parliamentary Initiative Network pointed out that the same Section had been amended by PFM (Amendment) Act, 2014 to read 30<sup>th</sup> May. In this circumstances therefore, it will be important to get the right wording.)*

## CLAUSE 9

This Clause proposes to amend Section 24 of the Act on the establishment of Parliamentary and other public funds so the National Treasury will develop accounting procedures and systems for administration of the Parliamentary Fund. Currently, development of those procedures is done by the Secretary to the parliamentary Service Commission.

*(The fundamental question to ask here is whether this will be in breach of separation of powers)*

## CLAUSE 10

This Clause proposes to amend Section 35 of the principal Act on national government budget process so as:

- (i) To increase the reporting period by the National Treasury on revenue and expenditure performance from 3 months to 4 months. This will allow consolidation of data within a month after the quarter (which is three months).

*(Most government reviews take place either quarterly, semi annually or annually and therefore it is not clear how the new proposal blends in the already established system. Further, the Controller of Budget (CoB) prepares quarterly budget implementation reports.)*

- (ii) Mirror subsection (1) (c ) with the provision at the county level under Section 125(1)(c)

## CLAUSE 11

This Clause proposes to amend Section 38 of the principal Act on revenue allocations to county governments so as to correct an erroneous reference to Article 202(2) of the Constitution. The Section applies to Article 202 of the Constitution and not specifically Article 202(2) of the Constitution.

## CLAUSE S 12, 13 & 14

This Clause proposes to amend Sections 39 and 42 of the Principal Act to allow withdraw of funds from the consolidated fund in the event Clause has not approved the same or both the Appropriation Act and the DoRB & CAoRB has not been passed by 1<sup>st</sup> of July.

### *Rationale for the Proposed Amendment as per the National Treasury*

1. The Constitution (especially Article 222) does not contemplate a situation where the National Assembly does not approve budget estimates before the end of a financial year. Thus, Article 222(1) authorizes the National Assembly to approve withdrawal of money to meet national government expenditure only when budget estimates have been approved by the National Assembly BUT an Appropriation Act has not been assented to by the President by the beginning of the financial year. A ruling/interpretation has already been issued by the courts on this matter.
2. The Constitution does not clarify what happens in the event that the National Assembly has not approved budget estimates at the end of the financial year. Experience in other countries suggests that such a scenario may occur. For example, in the US it happened during the second term of President Bill Clinton and this resulted in the shut-down/scale down of various government services/offices.
3. Under the current Constitution, the National Assembly has been given significant powers to amend the budget proposals of the Executive. This, therefore, suggests that differences on the budget estimates between the Executive and the Legislature will be inevitable and are likely to arise more often.
4. The increase in the Legislative powers to amend the budget and the absence of a provision in law for a '**Reversionary Budget**' increases the risk of a deadlock leading to non-approval of the Executive's budget and therefore the shut-down of government services.
5. Research indicates that the risk of a deadlock increases in countries, such as ours, with Presidential systems with a multiplicity of political parties. Additional complications arise if the vice-president belongs to a political party different from that of the president. For example, in 2005, the Indonesian vice-President was not only from a different political party from the President, but he was also appointed as the leader of the country's largest political party.
6. Under such circumstances (deadlocks and non-approval), countries have no choice but to go for elections. This, however, gives rise to some challenges. What happens in times of calamities (epidemics) or war where government intervention is necessary? It should be noted that under the Constitution (Article 223) a supplementary budget can only be authorised if there is an approved budget/Appropriation Act. If the deadlock cannot be resolved and the country has to go for an election, how would an election be funded without an approved budget? It should be remembered that governments are expected to ensure continuity of service delivery to citizens and avoid suffering by citizens.
7. This is the reason why countries around the world provide for '**reversionary budgets**' which is what the proposed insertion of Section 39A in the PFM Act 2012 seeks to do.
8. **Reversionary budget** defines the cost of not approving budgets by spelling out what happens should legislative authorisation be delayed beyond the commencement of the financial year. The reversionary position is also indicative of the relative budget amendment powers of the Executive vis-à-vis the legislature. If the reversionary budget is far from the Executive's preferred budget, then there is potential for the legislature to extract concessions

in return for approval. In the extreme case, where the reversionary position is zero budget (which is the case in the US and the possible outcome for Kenya without the proposed amendment), the Executive will have limited power to negotiate with the Legislature and will almost always have to compromise rather than have the possibility of no supply and hence government shutdown and/or by-elections.

In such cases, Clause has significant powers over the budget and can extract concessions. In the other extreme is where the Executive budget proposal takes effect as the reversionary budget as is the case in France. In such circumstances Clause has minimal oversight powers as they have no room to extract concessions while the Executive has no incentive to prevent the non-approval. The amendment proposed above is the intermediate option where the reversionary budget is the last year's budget. This is the reversionary position provided for in Germany and South Africa. This offers room for negotiating since last year's budget may not be the preferred choice of both the legislature and the Executive.

9. A similar Clause can be found in Section 29 of the South Africa's Public Finance Management Act of 1999 which reads as follows:

**29. Expenditure before annual budget is passed. —**

(1) *If an annual budget is not passed before the start of the financial year to which it relates, funds may be withdrawn in accordance with this Section from the relevant Revenue Fund for the services of the state or the province concerned during that financial year as direct charges against the Fund until the budget is passed.*

(2) *Funds withdrawn from a Revenue Fund in terms of subsection (1)—*

(a) *may be utilised only for services for which funds were appropriated in the previous annual budget or adjustments budget; and*

(b) *may not —*

(i) *during the first four months of that financial year, exceed 45 per cent of the total amount appropriated in the previous annual budget;*

(ii) *during each of the following months, exceed 10 per cent of the total amount appropriated in the previous annual budget; and*

(iii) *in aggregate, exceed the total amount appropriated in the previous annual budget.*

(3) *The funds provided for in subsection (1) are not additional to funds appropriated for the relevant financial year, and any funds withdrawn in terms of that subsection must be regarded as forming part of the funds appropriated in the relevant annual budget for that financial year.*

(4) *This Section does not apply in respect of a province unless a provincial Act provides that the withdrawal of funds in terms of this Section is a direct charge against that province's Revenue Fund.<sup>1</sup>*

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<sup>1</sup> Excerpt of S.29 of the South African Public Finance Management Act, 1999

The delays in the enactment of the two revenue Bills is likely to affect service delivery in the counties if measures are not put in place to provide for lawful way of allowing County Governments to access the equitable share of revenue as the approval of the two Bills is awaited hence the need for need for further amendments to Section of 42.

*CLAUSE 13 was opposed by the Parliamentary Initiative Network on the following grounds:*

*This proposal contravenes Articles 222 and 223 of the Constitution. If maintained as is, the Act will seemingly be amending the Constitution which in itself makes it unconstitutional. It appears to shift power to the executive to be able to spend in the absence of explicit authority from Parliament. It is possible that a Clause that was refusing to assent to the Appropriations Act on time would also be unwilling to call for a vote on account, which in turn would have the effect of shutting down the government. This Clause would seem to eliminate that possibility, which may be appropriate.*

*The Clause fails to rectify an ambiguous issue that has arisen before, which is whether the authorization to spend 50% of budget is against the original estimates tabled in Clause or the revised estimates after Clause has approved the budget committee report but before the Appropriations Act is tabled. It would appear to be more prudent to base this on the estimates revised by Parliament. In a situation where Clause decides to cut the budget of a particular vote to 40% of what Treasury has proposed for the year, if the vote is authorized up to 50% of what Treasury had tabled, this would allow expenditure beyond what Clause had indicated.*

*ON CLAUSE 14, PIN observed that this amendment appears to respond to the situation that has arisen since 2013 where the Division of Revenue and County Allocation of Revenue Act were not approved before the beginning of the financial year by allowing funds to be released against the draft bills.*

*While this amendment is useful, it does not address the fact that Clause has failed to adhere to its own deadlines. What might be prudent is to create an additional deadline for Clause to debate the recommendations from the CRA before the end of January. This would avoid a situation where Clause is on recess for the entire period during which this debate is supposed to happen (January 1 to February 15).*

#### **Committee observations regarding Clause s 12, 13 & 14**

- (i) Section 39 provides for the manner in which the National Assembly should consider the estimates. Specifically, Sub-Section 7 which makes reference to Article 222 of the Constitution stipulates that the National Assembly may authorize withdrawal from the Consolidated Fund, monies for government expenditure (not exceeding 50% of allocation) in the event that the Appropriation Act is or may not be enacted by the beginning of the financial year. The amendment proposes to add a further provision that will allow funds to be withdrawn from the Consolidated Fund without the approval by the National Assembly, as a direct charge.
- (ii) The Constitution (Articles 206, 222 and 223) gives circumstances under which funds may be withdrawn from the Consolidated Fund: First, through Appropriation Act. Second; during the transition between fiscal years where the National Assembly approves withdrawal of not more than half of approved amount for a Vote. Third; through supplementary appropriation and finally; through authority by the constitution or legislation

- (iii) The amendments proposed presuppose an impasse in the budgeting process to an extent that the relevant budgetary legislations would not have been passed by 1<sup>st</sup> of July. This is a pessimistic way of looking at things and should not be anticipated. In the unlikely event this happens, the Kenyan People will have to express their democratic right and reprimand all those that have failed to deliver on their mandate.
- (iv) Section 42 provides for the consideration of the DoRB and CARB by Parliament. The amendment proposes that not more than 50% of allocation to county governments may be transferred from the Consolidated Fund to the counties pending enactment of **DoRB and CARB**. However, there is a further requirement that the Controller of Budget shall approve such transfer only after receiving written instructions from the National Treasury.
- (v) Article 228(5) and 249(2)(b) of the Constitution which provides that the CoB must be satisfied that any withdrawal is authorized by law prior to approval, and that the Controller of Budget is independent and not subject to direction or control by any person or authority. These provisions suffice in terms of directing the Controller of Budget in the performance of his/her mandate. The weaknesses intended to be addressed can be cured by coordinating and scheduling critical budget timelines in the National and County governments

#### **CLAUSE 16**

This Clause proposes to amend Section 60 on loan repayment to obligate the Attorney General to issue the Controller of Budget with a certificate authorizing release of Funds for purposes of payment of loan guarantees.

*(It is not clear what this amendment seeks to achieve. Article 228(5) of the Constitution grants the Controller of Budget sufficient authority to satisfy himself/herself that any withdraw of funds from the Consolidated Fund is authorized by law. Further, Article 249(2)(b) clearly outlines that the Controller of Budget is independent and not subject to direction or control by any person or authority. This amendment therefore is unconstitutional and unnecessary. )*

#### **CLAUSE 17**

This Clause proposes to amend Section 66 of the principal Act on the roles of the accounting officers for the JSC, PSC and independent offices by requiring them to also monitor the non-financial performance of their entities.

#### **CLAUSE 19**

This Clause proposes to amend Section 77 of the principal Act by allowing the Cabinet Secretary to also vary tax charges alongside waiver that has been provided therein. This will align the act with Article 210 of the constitution that allows the wave, variation and imposition of tax charges by the Cabinet Secretary but with must be provided for in legislation.

#### **CLAUSE 20**

This Clause proposes to amend Section 78 of the principle to recognize other national revenue collectors besides the Kenya Revenue Authority. Examples are the CCK, KAA etc.

## **CLAUSE 21**

This Clause proposes to amend Section 82(4) of the principle act to make it clear that it is only the Cabinet Secretary for Finance that will be reporting to the Attorney General on the tax waivers, variations and tax impositions. Currently, the act obligates all revenue collectors to submit quarterly reports to the Auditor General on the same.

*(The merits of this amendment should be relooked as to who should report on this and the exact policy/operational gap in the implementation of the Act.)*

## **CLAUSE 22**

This Clause proposes to amend Section 87(1) by replacing the word “company” with “corporation” this is basically editorial as the rest of the Act refers to corporations not companies. Companies are not defined in the Act.

## **CLAUSES 23, 24 & 25**

These Clauses propose to amend Section 88 to introduce the government linked corporations for monitoring by the Cabinet Secretary. This implies that the Cabinet Secretary in charge will monitor the performance of both state corporations and also government-linked corporation under the docket. Could this be viewed as state meddling in the affairs of the government-linked corporations?

## **CLAUSE 26**

This Clause proposes to amend Section 93(3) of the principal Act to correct editorial drafting errors (to correct a spacing issue that was otherwise distorting the provisions of this Section).

## **CLAUSE 27**

This Clause proposes to amend Section 96(1) of the Principal Act by deleting the word “entity” thereby aligning the contents of the Section with those of the marginal note.

*(The Council of governors proposed further amendments to Section 96 sub-Sections (1) by inserting the words “specific county entity” immediately after the word “funds”. The justification to this was that the entities include both county executive and county assembly.*

*The purpose of the amendment is to recognize or provide that stoppage disbursement of Funds can only be done to individual county entity and not a county as whole. Though the National Treasury is opposed to this amendment by the Council of Governors on the grounds that it is inconsistent with Article 225, this inconsistency is not clear.)*

## **CLAUSE 28**

This Clause proposes to amend Section 97(4) by deleting the words “or renew”. This amendment pre-supposes that Parliament will always approve the decision of the Cabinet Secretary in so far stoppage of transfer of funds to the County Government is concerned within 30 days. The Constitution however allows Parliament to review the decision of the CS and may concur or differ. Parliament can also extend the period for a maximum of 30 days. This amendment may not be necessary.

### **CLAUSE 29**

This Clause proposes to amend Section 98(2) to align it with the exact wording of the Constitution.

### **CLAUSE 30**

This Clause proposes to amend Section 104(1) for purposes of clarity and uniformity with other Sections referring to county public funds.

### **CLAUSE 31**

This Clause proposes to amend Section 105(2) to provide that the County Treasury can designate any other person (other than its officers) to perform its specified duties. Examples of the functions that can be performed are audits carried out by KPMG on request of Government.

### **CLAUSE 32**

This Clause proposes to amend Section 107(2) by inserting the word county that was inadvertently omitted when enacting the Principal Act. It also proposes to insert the word "government" for purposes of grammar and also to synchronize with the provisions of Section 15(2).

### **CLAUSE 33**

This Clause proposes to amend Section 109(4) to provide that the County Revenue Fund will only be kept in the Central Bank of Kenya (because of TSA). This will facilitate easy operationalization of the Treasury Single Accounts (for both levels of governments) by having all County Exchequer Accounts in the Central Bank of Kenya. This will also enhance prudent management of PFM. The CBK has capacity to offer banking services to all the 47 counties and therefore there is no need for counties to be allowed to open accounts with banks with operating capital less than equitable for some county governments.

*(The Council of Governors opposed this amendment and therefore proposed its deletion.)*

### **CLAUSE 34**

This Clause proposes to amend Section 112 that deals with the powers of the County executive committee member to make payments from emergency by clearly defining the circumstances under which such payments can be made to the events that threatens human life. It further aligns this Section with Section 28(3) of the Principal Act regarding Contingencies Fund.

### **CLAUSE 35**

This Clause proposes to amend Section 116 of the Act to provide a distinction between public funds and county public funds. It further proposes to amend the Act so as to provide that statements must be audited before being presented to Parliament. It seems to eliminate the

requirement for a year-end report on county public funds to be filed in the Assembly, and requires instead that the Assembly receive the audited financial statements.

*(This Clause was opposed by the Parliamentary Initiative Network pointing out that while it makes sense for audited statements to be tabled in the Assembly, it is clear that the delays in auditing require that the Assembly exercise its oversight even before audited results are available. The current statute ensures that a final year-end financial statement is tabled with the Assembly for review, which allows oversight to continue while the final audited statements are awaited. The annual CoB and QEBR reports prepared for the full budget are unaudited, but provide crucial information on budget execution. The same would be true of these unaudited reports and this requirement should be maintained.)*

#### **CLAUSE 36**

This Clause amends Section 119(2) of the Principal Act to make it absolute that counties can only bank with a Treasury single account and not any accounts. As in Clause 33 above (Section 109(4a), this will facilitate easy operationalization of the Treasury Single Accounts (for both levels of governments) by having all County Exchequer Accounts in the Central Bank of Kenya.

*(This Clause was opposed by the Council of Governors who recommended its deletion)*

#### **CLAUSE 37**

This Clause proposes to amend Section 123 (3) of the Principal Act on the publication of the county government debt management strategy by removing the requirement that a copy of the statement should be submitted to the Commission on Revenue Allocation (CRA) and the Intergovernmental Budget and Economic Council. After being published and publicized, the statements become public documents for anybody to access. Therefore there is no need to give anybody copies.

*(The Council of Governors and the Parliamentary Initiative Network opposed this amendment and therefore proposed its deletion pointing out that CRA is given a constitutional role to advise counties on their revenue management and IBEC is required to review conditions for loan guarantees. Both entities have a need to see and review county debt management strategy papers.)*

#### **CLAUSE 38**

This Clause proposes to amend Section 125 of the principal Act on the County Governments budget process to remove “planning aspect” in sub-section 1 (b) since it has already been taken care of in paragraph (a)

#### **CLAUSE 39**

This Clause proposes to amend Section 126 of the principal act on the county budget process by clearly providing that it is the integrated county development plans that will have to be

prepared by the County and approved by the county assembly first. It is from these County integrated development plans that the County Executive Member responsible for planning will prepare the County annual Plans. The Bill further extends the deadline for preparation and submission to the county assembly of the annual development plans by the county executive member for planning from 1<sup>st</sup> September to 30<sup>th</sup> September. This will give him ample time to prepare the plans.

To ensure that county assemblies consider and pass the annual development plans prepared by the executive is done in time; the Bill proposes a deadline of 30<sup>th</sup> October to that effect.

*(This amendment was opposed by the Council of Governors who recommend 30<sup>th</sup> April instead.)*

#### **CLAUSE 40**

This Clause proposes to amend Section 127 of the Act by reducing the deadline within which the County Governments should prepare and submit their cash flow statement to the Controller of Budget from 15<sup>th</sup> June to 30<sup>th</sup> April. This will allow enough time for the Intergovernmental Budget and Economic Council to prepare the integrated cash disbursement schedule to the Counties by 15<sup>th</sup> June as provided for in Section 17(7) of the Principal Act-with further amendments in Clause 8 of this Bill.

*(While agreeing with this amendment, the Parliamentary Initiative network noted that Clause has not resolved the issue of approving its own Division of Revenue Act and County Allocation of Revenue Act on time. It is therefore unlikely that the county will be able to forecast well its major revenue source, the national transfer, by April 30. Clause should prioritize resolving this underlying issue first, for this amendment to be more meaningful).*

#### **CLAUSE 41**

This Clause proposes to amend Section 129 of the Principal Act by making it clear that the County Finance Bill is not one of the Bills counties will be obligated to pass by 30<sup>th</sup> June. This will mirror the government budget cycle provided for under Section 39.

*(The Council of Governors proposed deletion sub-Section 3)*

#### **CLAUSE 42**

This Clause proposes to amend Section 131 of the principal Act so as to limit the adjustments County Assemblies can make to the annual estimates with regard to the Vote Ceilings as approved by the County Assembly in the County Fiscal Strategy Paper (Clause 42(b)) to 10%. This will ensure adherence to what the assembly itself passed and avoid distorting county plans.

Clause 42(2) obligates the County Executive Member for Finance to provide a copy of the approved budget estimates to the National Treasury within two weeks of its approval. Further discussion will have to be held on whether this is necessary or not.

#### **CLAUSE 43**

This Clause proposes to amend Section 131 of the principal Act to allow the County Governments withdraw monies from the County Revenue Fund in case the County Assemblies delay passing the Appropriation Bill. It is a similar amendment proposed under Clause 13 of this Bill for the National Government.

*(This amendment should be treated the same way as Clause 13)*

#### **CLAUSE 44**

This Clause proposes to amend Section 132(1) of the Principal Act to make it clear that reference made is with regard to the County Executive Committee Member for Finance who prepares the County Finance Bill.

#### **CLAUSE 45**

This Clause amends Section 133 of the Principal Act to make it clear that Counties will approve the "County Finance Bill" and not the "Finance Bill" that will be approved by the National Government. The act was only talking of the "Finance Bill".

#### **CLAUSE 46**

Proposes to amend Section 136 of the Principal Act to provide for the timeline (14 days) in which the unspent appropriations to the County will have to be surrendered.

*("The Council of Governors opposed this amendment proposing that the un spent appropriations can be retained as before.)*

These further amendments from the Council of Governors were opposed by the National Treasury on the grounds that this provision is taken care of the re-vote of budgets. Further, the PFM Act provides that County Governments can spend up to 10% of their approved budgets and seek approval of the County Assembly within two months.

#### **CLAUSES 47 & 48**

Clause 47 proposes to amend Section 137 to make it clear that reference is made to the County Budget Review Paper and not the Budget review paper that is normally prepared by the National Government. Clause 48 proposes to amend the heading to reflect the contents thereafter.

#### **CLAUSE 49**

This Clause proposes to amend Section 141 of the Principal Act to make it clear that the loans in reference are for counties (subsection 1) and to remove unnecessary repetition of an expression "together with the principal amount" in subsection 9.

#### **CLAUSE 50**

This Clause proposes to amend Section 143(2) to make it clear that it is the County Executive Member of Finance that may designate other persons to execute county loan documents. This will ensure that the County Executive Member of Finance is in control of loan executions by the county government entities.

#### **CLAUSE 51**

This Clause proposes to amend Section 144(8) of the Principal Act to replace the word "delegate" with the word "person". The word delegate has not been defined in the Act and therefore cannot be used.

#### **CLAUSE 52**

This Clause proposes to amend Section 145 of the Principal Act for editorial reasons. For instance clarifying that the audit referred to in this Section is internal audit of the county government entities.

#### **CLAUSE 53**

This Clause proposes to amend Section 155 of the Principal Act to clarify that it is the audit committee referred and not an internal audit committee- there is no such committee as the internal audit committee.

#### **CLAUSE 54**

This Clause proposes to amend Section 159 of the Principal Act regarding powers of the county executive committee member for finance to waive or vary tax, fees or charges by aligning the wording of the marginal note with the text and also align it with Article 210 of the Constitution.

#### **CLAUSE 55**

This Clause proposes to amend the title after Section 162 so as to bring on board County Governments over and above County Government entities. This part relates to both county government entities and the County Governments.

#### **CLAUSE 56**

This Clause proposes to amend Section 165 of the Principal Act to extend the period within which the county receiver of revenue should report to the County Assembly on tax waivers or variations after the end of the financial year from two to three months. This will synchronize the reports with the provisions of annual reporting at the National Government and County Government. County Government entities should also report within the same time frame i.e. 3 months not 2 months. Furthermore waivers are granted by each County Executive Committee member responsible for Finance, and not by the Receivers of revenue.

#### **CLAUSE 57**

This Clause proposes to amend Section 171(2) of the Principal Act for editorial reasons i.e substituting “organ of state” with “state organ”

#### **CLAUSE 58**

This Clause proposes to amend Section 174 of the Principal Act to make a clear reference that it is a maximum percentage of the total revenue allocated to the Urban Areas that will have to be set by the County Assembly for personnel.

#### **CLAUSE 59**

This Clause proposes to amend Section 176 of the Principal Act to authorize withdrawal of up to 50% of the funds earmarked for urban areas in the event that the County Appropriations Bill has not been passed.

This Clause should be treated the same way as Clauses 13 and 43 on both county and national governments funding in the event appropriations Bills have not been passed.

#### **CLAUSE 60**

This Clause proposes to amend Section 178 of the Principal Act that deals with the conditions under which urban areas or cities may receive grants. It will be important to include “donations” that was inadvertently omitted from some sub Sections during enactment of the Principal Act.

The amendment to subsection (7) seeks to obligate the County Executive Committee Member of Finance to seek approval from the Cabinet Secretary for Finance whenever permitting donors to audit donations to county governments or county government entities. This will ensure that the National Treasury is in the picture on those engagements for quality control.

Development Partners provide grants to county governments as part of the assistance to the Government of Kenya. However, whenever development partners have a problem with one County Government they will ordinarily stop flow of funds to all Government of Kenya programmes and projects and hence the importance of the CS to grant approval whenever a development partner intends to identify their own auditors to audit grants in a particular County Government.

*(This amendment was opposed by the Council of Governors.)*

#### **CLAUSE 61**

This Clause proposes to amend Section 180 of the Principal Act to make it clear that the format of reporting by the urban areas’ accounting officer should follow that of the international standards.

It also proposes to put a time limit of three months after the end of the financial year within which the accounting officer for the urban areas should submit his /her report to the Auditor General and the County Treasury.

#### **CLAUSE62**

This Clause proposes to amend Section 183 of the Principal Act to replace the word “company” with the word “corporation”. This is editorial as the word “company” has not been defined in the Act.

#### **CLAUSE S 63, 64 & 65**

These Clauses propose to amend Sections 184, 185 and 186 of the principal Act to obligate the County Executive Committee Members to be involved in monitoring the financial performance and reporting of the County Government-linked corporations. They also align Sections 184 and 185 with Section 84 as amended in Clause 23 of this bill.

There is need for these reports to also go to the respective County Assembly here as provided in Article 229(7). In addition to this County Executive Committee member is added to mirror the provisions of 89(4) and also to recognize that the County Executive committee member is assigned the responsibility of oversight of county public finances.

A County Government linked corporation has been defined in Section 186 (a) of the Act as a county corporation in which the county government is a shareholder with less than fifty percent of the share capital of the corporation.

#### **CLAUSE 66**

This Clause proposes to amend Section 187 (3) of the Principal Act to remove the term limit of the Members of the Intergovernmental Budget and Economic Council. This is with the realization that the membership to the Council is based on the offices they hold and not arbitrary choice.

*(The Council of Governors opposed this amendment and proposed its deletion)*

#### **CLAUSE 67**

This Clause proposes to amend Section 193 of the Principal Act on the composition and functions of the Public Sector Accounting Standards Board by providing that the Board shall be accountable to the Cabinet Secretary for Finance on matters of finance by:

- a. Providing its work plan for the year
- b. Providing annual reports on its activities
- c. Providing regular reports on public sector finance to the Cabinet Secretary within two weeks of requests

## CLAUSE 68

This Clause proposes to amend Section 197 of the principal Act by including officers employed by the County Government or the county government entities in this part that deals with offences by public officers. The two had been omitted during the enactment of the Principal Act.

## CLAUSE 69

This Clause proposes to amend the second schedule for editorial reasons i.e making correction of the title of the Act referred to here and also making the right reference of the Section of the PFM law.

### 3.0 PROPOSED AMENDMENTS BY THE COUNCIL OF GOVERNORS

Through its memorandum to the Committee, the Council of Governors proposed the following amendments:

#### Clause 3

THAT Clause 3 of the Bill be deleted.

*(The role of Parliament should be limited to a general oversight role of the funding transferred to counties from the National government and not decisions of individual counties)*

#### Clause 33

THAT Clause 33 of the Bill be deleted

*(removes obligation to maintain Treasury Single Account)*

#### Insertion of new Clause

Amendment of  
Section 117 of No  
18 of 2012

**35A.** Section 117(6) of the principal Act is amended by inserting the words “such amendments shall not exceed ten percent of the set ceilings” immediately after the word “amendments”.

*Justification to this is that County assemblies should not be allowed to do wholesale changes to the fiscal strategy paper passed by them. While agreeing with the policy direction of the amendment by the Council of Governors, the National Treasury proposed further amendments so as to mirror Section 25(7) of the Principal Act thus Section 117 of the Principal Act be amended by deleting subSection (6) and substituting therefor with the following:*

(6) not later than fourteen days after submitting the County Fiscal Strategy Paper to the County Assembly, the County Assembly shall consider and may adopt it with or without amendments and such amendments shall not exceed 10% of the set ceilings.

**Clause 36**

THAT Clause 36 of the Bill be deleted  
*(removes obligation to maintain treasury single account)*

**Clause 37**

THAT Clause 37 of the Bill be deleted  
*(CRA is given a constitutional role to advise counties on their revenue management and IBEC is required to review conditions for loan guarantees. Both entities have a need to see and review county debt management strategy papers.)*

**Clause 39**

THAT Clause 39 be amended in sub clause (d) by deleting the word “October” and substituting therefor the word “April”.  
*(Assemblies to pass annual development plans by 30<sup>th</sup> April)-treasury opposed this amendment*

**Clause 41**

THAT Clause 41 be amended by inserting the following new paragraph immediately after paragraph (a)

“in subsection (3) by inserting the expression “ by the 31<sup>st</sup> March in every year” immediately before the words “ the budget estimates”.  
*(To give the deadline within which the assemblies should submit their budgets to CEs for finance)*

**Clause 46**

THAT 46 be deleted:

*This is meant to address issues surrounding unspent appropriations at the end of each financial year. This amendment was opposed by the National Treasury on the grounds that this provision is taken care of the re-vote of budgets. Further, the PFM Act provides that County Governments can spend up to 10% of their approved budgets and seek approval of the County Assembly within two months.*

**Clause 60**

THAT Clause 60 be amended by deleting sub-clause (b)(i) .

*This removes the requirement of Cabinet Secretary’s authorization for auditing of county government grants and donations. This amendment was opposed by the National Treasury on the grounds provided under Clause 46 above.*

**Clause 66**

That Clause 66 be deleted –

*(Membership to the Budget and economic Council to exclude IEBC)*

#### 4.0 PROPOSED AMENDMENTS BY THE PARLIAMENTARY INITIATIVES NETWORK (PIN)

PIN is a forum for non-state actors in Kenya with a programmatic interest in Parliament. It brings together eighteen organizations including professional associations, think tanks, research institutions and civil society organizations that focus on affecting Parliamentary business from a technical perspective. PIN supports the legislature in reviewing policies and drafting legislation. It also provides support and research in the areas of oversight, legislation and representation as well as developing tools to assist Clause monitor implementation of its decisions and laws.

Through its memorandum to the Committee, the Parliamentary Initiatives Network proposed the following amendments:

##### CLAUSE 3

THAT Clause 3 of the Bill be deleted.

##### CLAUSE 5

THAT Clause of the Bill be deleted

*(Removes additional mandate of PBO claiming that it will be overwhelming)*

##### CLAUSE 8

THAT Clause 8 of the Bill be deleted and replaced therefor with the following new Clause –

- 8 Section 17 of the Principal Act is amended in subsection (7) by deleting the expression “30<sup>th</sup> May” and substituting therefor the expression “15<sup>th</sup> June”  
*(the amendment is already effected through PFM amendment act, 2014)*

##### CLAUSE 13

THAT Clause 13 of the Bill be deleted

*(Unconstitutional –withdrawal of funds from CFS without requisite laws)*

#### INSERTION OF NEW CLAUSE S

THAT the following new Clause s be inserted immediately after Clause 15—

Amendment of Section 53 of No.16 of 2012 **15A.** Section 53 of the principal Act is amended by inserting the following new subsection immediately after subsection 16—

“(17) The provisions of this Section shall abide by article 201(c) of the constitution.”

*Justification: The provision provides for the equitable share of benefits and burdens of the use of resources and public borrowing between the current and future generations.*

## INSERTION OF A NEW CLAUSE

Amendment of **15B.** Section 53A of the principal Act is amended by inserting the following new  
Section 53A of subsection immediately after sub Section 17—  
No.16 of 2012

“(3A) Any external loans or external government securities issued by the Cabinet Secretary shall be done in consultation with the Public Debt Management Office and within the Medium Term Debt Management Strategy.”

*Justification: Wider consultations and due diligence not provided for before issuance of external loans or external government securities by the national treasury. This if not well managed can worsen our public debt situation*

**THAT** the following new Clause be inserted immediately after Clause 20—

Amendment of **20A.** Section 81(2) of the principal Act is amended in paragraph (d) by inserting  
Section 81 of the words “contingency liabilities that arise out of loan guarantees” immediately after  
No.16 of 2012 the word “deposits.”

*Justification: To cure lack of a compressive reporting on financial position of government. This Section provides for cash accounting as opposed to the overall objective accrual accounting which presents more comprehensive and complete reporting. Accrual accounting will present all facets of reporting, of which Assets and other liabilities have been left out by this Section . The best international practice is accrual accounting.*

## CLAUSE 35

That Clause 35 of the Bill be deleted

THAT clause 35 of the Bill be deleted

*(That while it makes sense for audited statements to be tabled in the Assembly, it is clear that the delays in auditing require that the Assembly exercise its oversight even before audited results are available. The current statute ensures that a final year-end financial statement is tabled with the Assembly for review, which allows oversight to continue while the final audited statements are awaited. The annual Controller of Budget and Quarterly Economic Budget Review reports prepared for the full budget are unaudited, but provide crucial information on budget execution. The same would be true of these unaudited reports and this requirement should be maintained).*

## INSERTION OF A NEW CLAUSE

**THAT** the following new Clause be inserted immediately after Clause 35—

Amendment of Section 117 of No.16 of 2012 **35A.** Section 117 of the Principal Act is amended in subsection (1) by deleting the expression “28<sup>th</sup> February” and substituting therefor the expression “15<sup>th</sup> March”.

*Justification: Given that the BPS is submitted to National Assembly by 15<sup>th</sup> of February and the CFSP by 28<sup>th</sup> February in each year, there is inadequate time for the County Treasuries to align their budget policies to the National budget policies. This will provide a period of a month for the County Treasuries to interrogate and understand the national policies as contained in the BPS so as to effectively align County policies to national policies in the preparation of the County Fiscal Strategy Paper.*

#### **CLAUSE 37**

That Clause 37 of the Bill be deleted

*(copy of the debt management strategy paper should not be sent to CRA since it will have a been publicized and hence a public document)*

#### **CLAUSE 39**

**THAT** Clause 39 of the Bill be amended—

- (a) in paragraph (c) by deleting the expression “30<sup>th</sup> September” and substituting therefor the expression “15<sup>th</sup> September”; and
- (b) in paragraph (d) by deleting the expression “30<sup>th</sup> October” and substituting therefor the expression “30<sup>th</sup> September”.

*Justification: ADP be tabled by 15 September and approved by 30 September, and the CBROP be prepared by 15 October and approved by end of October. This should allow the sector hearings to go forward from late November. (Postpones the tabling of the annual development plan, and provides a definitive period for review)*

#### **INSERTION OF A NEW CLAUSE**

**THAT** the following new Clause be inserted immediately after Clause 40—

Amendment of Section 128 of No.16 of 2012 **40A.** Section 128 of the principal Act is amended in subsection (2) by deleting the expression “30<sup>th</sup> August” and substituting therefor the expression “30<sup>th</sup> September”.

*Justification: County government policy priorities are driven by the national government priorities, part of which is articulated through the budget circulars. All County planning must be underpinned by the broader national planning framework. Section 36(2) and 128(2)) both provide for 30<sup>th</sup> August in each year as the date by when budget circulars ought to be issued.*

## CLAUSE 67

THAT Clause 67 of the Bill be amended by—

(a) inserting the following new paragraph immediately after paragraph (a)—

(aa) deleting the subsection (5) and replacing therefor the following new subsection

—  
“(5) The Board shall establish an independent Secretariat to effectively perform its functions.”

(ab) inserting the following subsection after subsection (6)—

“(7) The budget of the Board shall be a charge on the Consolidated Fund.”

*Justification: The Principal Act provides that the National Treasury shall provide secretariat services to the Board, yet it is the primary consumer of the standards to be developed by the Board. This may give rise to actual or perceived conflict of interest.*

## INSERTION OF A NEW CLAUSE

THAT the following new Clause be inserted immediately after Clause 67—

Amendment of  
Section 194 of  
No.16 of 2012

**67A.** Section 194 of the principal Act is amended in subsection (2) inserting the words “including International Public Sector Accounting Standards” immediately after the words “accounting practices” in paragraph (a).

*Justification: The best international practice is International Public Sector Accounting Standards*

## **5.0 COMMITTEE RECOMMENDATION**

Having listened to the stakeholders and from its own analysis, the Committee has consolidated amendments for further discussion with the National Treasury in line with Article 114 for possible introduction into the Public Finance Management (Amendment) Bill, 2015 during the Committee Stage. The amendments are annexed to this report.

DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

MEMBERS ATTENDANCE REGISTER

DATE 12/11/2015 TIME 10.00AM  
 AGENDA MEETING WITH CENTRAL BANK GOVERNOR ON BANKING SUPERVISION; CONFIRMATION OF MINUTES OF 55<sup>TH</sup>, 56<sup>TH</sup>, 57<sup>TH</sup>, 58<sup>TH</sup> & 59<sup>TH</sup> SITTING

	NAME	TITLE	SIGNATURE
1	Hon Benjamin Longat	Chairman	
2	Hon. Sir Mungo	Member	
3	Hon. Jones Mbulwa	Member	
4	Hon. TIM E. Boring	"	
5	Hon Mary Emaas	"	
6	Hon. Daniel Eruyo Nankok	"	
7	Hon. Kirwa Stephen Bitor	"	
8	Hon. Anyanga Andrew Toboso	"	
9	Hon Sammy Mwele	"	
10	Hon. haki lelet	"	
11	SAKWA BUNYASI	"	
12	HON. SAMMY MWAITA	"	
13	Hon. Abdul Rahim SAWOOD	"	
14	Hon ROSE NYAMUNDA	"	not
15	SHAIKEL SHABBIR	"	
16	Hon. Dr. Oburu Gisinga	"	
17	Hon. Kusai Inigo	"	
18	Hon Joseph K. hino	"	
19	Hon Patrick Makau	"	
20	Hon Nelson Gachui	✓   chair	
21	Hon JIMMY ANJUMENI	member	
22	HON JENNIS WAWERU	member	
23			
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DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

MEMBERS ATTENDANCE REGISTER

DATE	TIME		
13/10/2015	12:00 (NOON)		
AGENDA	CONSIDERATION OF PRESIDENTIAL MEMORANDUM ON THE EXCISE DUTY BILL, 2015 & ADOPTION OF REPORTS ON BILLS BEFORE THE COMMITTEE		
	NAME	TITLE	SIGNATURE
1	Hon Benjamin Lungu	Chair	
2	Hon Nelson Gaidime	Y/Chair	
3	Hon. Sunny Mwata	Member	
4	Hon Rose Nyamwa	Member	
5	Hon. James Maloka	"	
6	Eng S.R MANGA	"	
7	HON. JIMMY ARAMWILI	Member	
8	HON RONALD TONOI	"	
9	Hon. A. RAHIM SAWOOD	"	
10	Hon Patrick Mwakazi	"	
11	Shakeel Shabbir Ahmed	"	
12	Hon Mary Emease	"	
13	Hon Joseph LIMO	"	
14	Hon. SAKWA T. BUNYATI	"	
15	Hon. T.M.E. GOSWE	"	
16	Hon. Joseph Oluo	"	
17	Hon Ismaad Sumra	"	
18	Hon. Antanga Andrew Toboso	"	
19	Hon. A.S. NASHU	"	
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**Consolidated amendments**

**Clause 3**

THAT clause 3 of the Bill be deleted in paragraph a.

*(Parliament should not be involved in declaration of county entities)*

**Clause 5**

That clause 5 of the Bill be deleted.

*(Removes additional mandate of PBO)*

**Clause 8**

**THAT** clause 8 of the Bill be deleted and replaced therefor with the following new clause—

8. Section 17 of the principal Act, is amended in subsection (7) by deleting the expression “30<sup>th</sup> May” and substituting therefor the expression “15<sup>th</sup> June”

*(the amendment is already effected through PFM amendment act, 2014)*

**Clause 13**

**THAT** clause 13 of the Bill be deleted

*(Unconstitutional –withdrawal of funds for CFS without requisite laws)*

**Clause 15**

**Insertion of new clause**

**THAT** the following new clauses be inserted immediately after clause 15—

Amendment of **15A.** Section 53 of the principal Act is amended by inserting the following new  
section 53 of subsection immediately after subsection 16—  
No.16 of 2012

“(17) The provisions of this section shall abide by article 201(c) of the constitution.”

*Justification: The provision provides for the equitable share of benefits and burdens of the use of resources and public borrowing between the current and future generations.*

## Insertion of new clause

Amendment of 15B. Section 53A of the principal Act is amended by inserting the following new section 53A of subsection immediately after sub section 17—  
No.16 of 2012

“(3A) Any external loans or external government securities issued by the Cabinet Secretary shall be done in consultation with the Public Debt Management Office and within the Medium Term Debt Management Strategy.”

*Justification: Wider consultations and due diligence not provided for before issuance of external loans or external government securities by the national treasury. This if not well managed can worsen our public debt situation*

## Clause 20

### Insertion of new clause

**THAT** the following new clause be inserted immediately after clause 20—

Amendment of 20A. Section 81(2) of the principal Act is amended in paragraph (d) by inserting section 81 of the words “contingency liabilities that arise out of loan guarantees” immediately after No.16 of 2012 the word “deposits.”

*Justification: To cure lack of a comprehensive reporting on financial position of government. This section provides for cash accounting as opposed to the overall objective accrual accounting which presents more comprehensive and complete reporting. Accrual accounting will present all facets of reporting, of which Assets and other liabilities have been left out by this section. The best international practice is accrual accounting.*

## Clause 27

**THAT**, clause 27 of the Bill be deleted and substituted with the following new clause—

27. That clause 96 be amended in clause (1) by—

(a) deleting the word “entity” appearing immediately after the word “county government”;  
and

(b) inserting the words “ to the specific county entities” immediately after the word “funds”

*(to recognize or provide that stoppage disbursement of Funds can only be done to individual county entity and not a county as whole. Though the National Treasury is opposed to this*

*amendment by the Council of Governors on the grounds that it is inconsistent with Article 225, this inconsistency is not clear)*

### **Clause 33**

**THAT**, clause 33 of the Bill be deleted.

(CoG opposed to operationalization of Treasury Single Accounts asserting that they should be allowed to operate other commercial banks)

### **Clause 35**

(i) CoG amendments

**THAT** clause 35 of the Bill be deleted

*(This clause was opposed by the Parliamentary Initiative Network pointing out that while it makes sense for audited statements to be tabled in the Assembly, it is clear that the delays in auditing require that the Assembly exercise its oversight even before audited results are available. The current statute ensures that a final year-end financial statement is tabled with the Assembly for review, which allows oversight to continue while the final audited statements are awaited. The annual COB and QEBR reports prepared for the full budget are unaudited, but provide crucial information on budget execution. The same would be true of these unaudited reports and this requirement should be maintained).*

(ii) Pin amendments

### **Insertion of new clause**

**THAT** the following new clause be inserted immediately after clause 35—

Amendment of section 117 of No.16 of 2012 of **35A.** Section 117 of the Principal Act is amended in subsection (1) by deleting the expression “28<sup>th</sup> February” and substituting therefor the expression “15<sup>th</sup> March”.

*(Justification: Given that the BPS is submitted to National Assembly by 15<sup>th</sup> of February and the CFSP by 28<sup>th</sup> February in each year, there is inadequate time for the County Treasuries to align their budget policies to the National budget policies. This will provide a period of a month for the County Treasuries to interrogate and understand the national policies as contained in the BPS so as to effectively align County policies to national policies in the preparation of the CFSP)*

### **CLAUSE 36**

**THAT**, clause 36 of the Bill be deleted.

(CoG opposed operationalization of Treasury Single Accounts that replaces the current use of any account approved by the county treasury)

**Clause 37**

**THAT** clause 37 of the Bill be deleted

(copy of the debt management strategy paper should not be sent to CRA since it will have a been publicized and hence a public document)

**Clause 39-pin**

**THAT** clause 39 of the Bill be amended—

- (a) in paragraph (c) by deleting the expression “30<sup>th</sup> September” and substituting therefor the expression “15<sup>th</sup> September”; and
- (b) in paragraph (d) by deleting the expression “30<sup>th</sup> October” and substituting therefor the expression “30<sup>th</sup> September”.

*(Justification: ADP be tabled by 15 September and approved by 30 September, and the CBROP be prepared by 15 October and approved by end of October. This should allow the sector hearings to go forward from late November. (Postpones the tabling of the annual development plan, and provides a definitive period for review)*

**Clause 40**

**Insertion of new clause**

**THAT** the following new clause be inserted immediately after clause 40—

Amendment of **40A.** Section 128 of the principal Act is amended in subsection (2) by deleting the section 128 of expression “30<sup>th</sup> August” and substituting therefor the expression “30<sup>th</sup> September”.  
No.16 of 2012

*Justification: County government policy priorities are driven by the national government priorities, part of which is articulated through the budget circulars. All County planning must be underpinned by the broader national planning framework. Section 36(2) and 128(2)) both provide for 30<sup>th</sup> August in each year as the date by when budget circulars ought to be issued.*

#### **Clause 41**

**THAT** clause 41 be amended by inserting the following new paragraph immediately after paragraph (a) —

“in subsection (3) by inserting the expression “ by the 31<sup>st</sup> March in every year” immediately before the words “ the budget estimates”.

(To give a deadline on submission assembly estimates)

#### **Clause 60**

**THAT** clause 60 be amended by deleting sub-clause (b) (i)

*(CoG is opposed to requirement for CEM for finance to seek approval from CS treasury whenever his/her county is receiving donations or grants)*

#### **Clause 66**

**THAT** clause 66 be deleted

*(Concerns the term limit of IBEC members- CoG maintains that it should remain whereas membership is based on the office one holds)*

#### **Clause 67**

**THAT** clause 67 of the Bill be amended by—

(a) inserting the following new paragraph immediately after paragraph (a)—

(aa) deleting the subsection (5) and replacing therefor the following new subsection—

“(5) The Board shall establish an independent Secretariat to effectively perform its functions.”

(ab) inserting the following subsection after subsection (6)—

“(7) The budget of the Board shall be a charge on the Consolidated Fund.”

“(b) renumbering subsections (4), (5), (6) and (7) as (7), (8),(9) and (10). ”

*Justification: The Principal Act provides that the National Treasury shall provide secretariat services to the Board, yet it is the primary consumer of the standards to be developed by the Board. This may give rise to actual or perceived conflict of interest.*

**Insertion of new clause**

**THAT** the following new clause be inserted immediately after clause 67—

Amendment of section 194 of No.16 of 2012 of **67A.** Section 194 of the principal Act is amended in subsection (2) inserting the words “including International Public Sector Accounting Standards” immediately after the words “accounting practices” in paragraph (a).

Justification: best practice is IPSAS.

**MINUTES OF THE 44<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
FINANCE, PLANNING & TRADE HELD ON TUESDAY 28<sup>TH</sup> JULY, 2015 IN  
CONTINENTAL HOUSE, 5<sup>TH</sup> FLOOR, PARLIAMENT BUILDINGS, AT 10.00AM**

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**PRESENT**

1. Hon. Benjamin Langat, MP
2. Hon. Nelson Gaichuhie, MP
3. Hon. Jimmy Nuru Angwenyi, MP
4. Hon. Eng. Shadrack Manga, MP
5. Hon. Dr. Oburu Oginga, MP
6. Hon. Sammy Mwaita, MP
7. Hon. Iringo Cyprian Kubai, MP
8. Hon. Anyanga Andrew Toboso, MP
9. Hon. Timothy Bosire, MP
10. Hon. Ronald Tonui, MP
11. Hon. Jones Mlolwa, MP
12. Hon. Sakwa John Bunyasi, MP
13. Hon. Lati Lelelit, MP

**Chairperson**

**Vice-Chairperson**

**ABSENT WITH APOLOGIES**

1. Hon. Alfred Sambu, MP
2. Hon. Shakeel Shabbir, MP
3. Hon. Tiras Ngahu, MP
4. Hon. Dennis Waweru, MP
5. Hon. Daniel Epuyo Nanok, MP
6. Hon. Kirwa Stephen Bitok, MP
7. Hon. Joash Olum, MP
8. Hon. Sammy Koech, MP
9. Hon. Sumra Irshadali, MP
10. Hon. Patrick Makau King'ola, MP
11. Hon. Joseph Limo, MP
12. Hon. Ogendo Rose Nyamunga, MP
13. Hon. Mary Emase, MP
14. Hon. Abdullswamad Shariff, MP
15. Hon. Abdul Rahim Dawood, MP
16. Hon. Sakaja Johnson, MP

**IN ATTENDANCE**

- |                         |                       |
|-------------------------|-----------------------|
| 1. Mr. Evans Oanda      | First Clerk Assistant |
| 2. Mr. Nicodemus Maluki | Third Clerk Assistant |
| 3. Mr. Fredrick Otieno  | Third Clerk Assistant |
| 4. Mr. Eric Ososi       | Research Officer      |
| 5. Brigittah Mati       | Legal Counsel         |

**MIN.NO. DCF/205 /2015: PRELIMINARIES**

The Chairperson called the meeting to order at 10. 50 a.m. followed by a word of prayer from Mr. Fredrick Otieno. He further informed the Members that the Committee was scheduled to meet the Cabinet Secretary, Ministry of Devolution and Planning for questions time. However the Cabinet secretary had sent an apology indicating that she was out the Country on official duty until 7<sup>th</sup> August, 2015.

**MIN.NO. DCF/206 /2015: CONSIDERATION OF THE PROPOSED AMENDMENTS TO PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2015**

This Agenda item was deferred to be deliberated alongside the other budget implementation Bills during the upcoming Committee's Retreat scheduled for 30<sup>th</sup> July and 2<sup>nd</sup> August, 2015.

**MIN.NO. DCF/207 /2015: ANY OTHER BUSINESS**

Under this agenda item the following issues were raised;

- i) The Committee was concerned that it was not actively involved in the just concluded Global Entrepreneurship Summit in Kenya.
- ii) The Committee resolved to postpone the joint retreat with the Salaries and Remuneration Commission in Mombasa to the period between 13<sup>th</sup> and 16<sup>th</sup> August, 2015.
- iii) The Chairperson reminded Members that the Committee will meet the Governor of the Central Bank of Kenya on Thursday 30th July, 2015 to deliberate on the Country's monetary policy. The Secretariat was requested to seek approval from the Speaker for the Committee to sit on Wednesday 29<sup>th</sup> July, 2015 at 12:00 pm to prepare for that meeting.

**MIN.NO. DCF/208 /2015: ADJOURNMENT**

The chairperson adjourned the meeting at 11.50am

Signed.....

**Chairperson**

Date.....06 - 10 - 2015

**MINUTES OF THE 48<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
FINANCE, PLANNING & TRADE HELD ON WEDNESDAY 5TH AUGUST, 2015 IN  
MAIN PARLIAMENT, COMMITTEE ROOM 7 AT 11AM**

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**PRESENT**

1. Hon. Benjamin Langat, MP
2. Hon. Nelson Gaichuhie, MP
3. Hon. Dr. Oburu Oginga, MP
4. Hon. Sammy Mwaita, MP
5. Hon. Tiras Ngahu, MP
6. Hon. Anyanga Andrew Toboso, MP
7. Hon. Sakaja Johnson, MP
8. Hon. Lati Lelelit, MP
9. Hon. Sakwa John Bunyasi, MP
10. Hon. Kirwa Stephen Bitok, MP
11. Hon. Ogendo Rose Nyamunga, MP
12. Hon. Ronald Tonui, MP
13. Hon. Daniel Epuyo Nanok, MP
14. Hon. Sumra Irshadali, MP
15. Hon. Timothy Bosire, MP
16. Hon. Iringo Cyprian Kubai, MP
17. Hon. Patrick Makau King'ola, MP
18. Hon. Jones Mlolwa, MP
19. Hon. Abdul Rahim Dawood, MP
20. Hon. Joseph Limo, MP

**Chairperson**

**Vice-Chairperson**

**ABSENT WITH APOLOGIES**

1. Hon. Alfred Sambu, MP
2. Hon. Jimmy Nuru Angwenyi, MP
3. Hon. Eng. Shadrack Manga, MP
4. Hon. Mary Emase, MP
5. Hon. Abdullswamad Shariff, MP
6. Hon. Shakeel Shabbir, MP
7. Hon. Dennis Waweru, MP
8. Hon. Joash Olum, MP
9. Hon. Sammy Koech, MP

## IN ATTENDANCE

- |                         |                              |
|-------------------------|------------------------------|
| 1. Mr. Josephat Motonu  | Parliamentary Budget Officer |
| 2. Mr. Nicodemus Maluki | Third Clerk Assistant        |
| 3. Mr. Fredrick Otieno  | Third Clerk Assistant        |
| 4. Mr. Eric Ososi       | Research Officer             |
| 5. Ms. Doreen Karani    | Legal Officer                |

## MIN.NO. DCF/209/2015: PRELIMINARIES

The Chairperson called the meeting to order at 11:20am followed by a word of prayer.

## MIN.NO. DCF/210 /2015: PRESENTATION BY PARLIAMENTARY BUDGET OFFICE ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2015

The Parliamentary Budget Office informed the Committee as follows:

The Public Finance (Amendment) Bill, 2015 proposes to amend various Sections of the Principal Act in order to ensure its smooth implementation. The Act was enacted in July 2012 and has hitherto been amended twice in the Act Number 34 of 2013 and Act Number 6 of 2014.

### Analysis of Pertinent Issues in the Bill

- i. **Definition of “government to government loan” (clause 2(c)):** the definition of government to government loan includes among others, a financial institution that is an intermediary between the government and exporters. This cannot fit into the definition. This may potentially open a situation where some institutions of questionable credentials will be involved lending to government.
- ii. **The Senate Budget and Finance Committee to oversight the County Governments on budget (clause 4):** the amendment to Section 8(1)(d) clarifies the fact the Senate Budget and Finance Committee monitors the adherence to the principles of public finance by the County Governments and not the Senate.
- iii. **The National Treasury to designate any person to perform any of its powers and responsibilities (clause 6):** in Section 13, among the powers of the National Treasury is that it can authorize any of its officers in writing to carry out a responsibility or exercise a power on its behalf. Now, by including the designation of “any other person” by the National Treasury may mean that persons other than Treasury Officers can be designated to perform its responsibilities or exercise of certain powers.
- iv. **Parliament to approve public debt level for both National and County Governments (clause 7(a)(ii)):** Section 15(2)(d) provides for both the County Assembly and Parliament

to approve the sustainable level of public debt and obligation for the county government. The proposed amendment removes the County Assembly from such approval.

- v. **National Treasury to specify accounting procedures and systems in management of Parliamentary Fund (clause 9):** Section 24(3) gives the Parliamentary Service Commission powers to establish accounting procedures and systems for the Parliamentary Fund. The amendment further adds that such accounting procedures and systems shall be specified by the National Treasury.
  
- vi. **Quarterly budget review reports to be reduced to 3 reports in a year (clause 10(b)):** Section 35 (1)(j) provides for quarterly budget reviews and reporting but the amendment is proposing the reduction of reviews from 4 to 3 in a year. Most government reviews take place either quarterly, semi-annually or annually and therefore it is not clear how the new proposal blends in the already established system. Further, the CoB prepares quarterly budget implementation reports.
  
- vii. **Suspension of the requirement for the National Assembly's authorization to withdraw money from the Consolidated Fund when the Appropriation Act has not been enacted (clause 13):** Section 39 provides for the manner in which the National Assembly should consider the estimates. Specifically, Sub-section 7 which makes reference to Article 222 of the Constitution stipulates that the National Assembly may authorize withdrawal from the Consolidated Fund, monies for government expenditure (not exceeding 50% of allocation) in the event that the Appropriation Act is or may not be enacted by the beginning of the financial year. The amendment proposes to add a further provision that will allow funds to be withdrawn from the Consolidated Fund without the approval by the National Assembly, as a direct charge.  

It is noted that the Constitution (Articles 206, 222 and 223) gives circumstances under which funds may be withdrawn from the Consolidated Fund: First, through Appropriation Act. Second; during the transition between fiscal years where the National Assembly approval withdrawal of not more than half of approved amount for a Vote. Third; through supplementary appropriation and finally; through authority by the constitution or legislation

Therefore, the basic understanding of the last method is a case where a law is passed which occasions expenditure of public funds that shall then impose a direct charge on the Consolidated Fund and not the regular appropriation such as the case here.

*This is a reversionary amendment that is not only unconstitutional, but also has no precedence in progressive jurisdictions.*

- viii. **The Controller of Budget to receive written instructions from the National Treasury in order to approve withdrawals from the Consolidated Fund, of monies to the County Governments, pending enactment of the DoRB and CARB (clause 14):** Section 42 provides for the consideration of the DoRB and CARB by Parliament. The amendment proposes that not more than 50% of allocation to county governments may be transferred from the Consolidated Fund to the counties pending enactment of **DoRB and CARB**. However, there is a further requirement that the Controller of Budget shall approve such transfer only after receiving written instructions from the National Treasury.

It is noted that Article 228(5) and 249(2)(b) of the Constitution which says that the CoB must be satisfied that any withdrawal is authorized by law prior to approval, and that the Controller of Budget is independent and not subject to direction or control by any person or authority. These provisions suffice in terms of directing the Controller of Budget in the performance of his/her mandate.

However, the weaknesses intended to be addressed can be cured by coordinating and scheduling critical budget timelines in the National and County governments.

- ix. **The Attorney General to issue the Controller of Budget with the certificate authorizing the release of funds from the Consolidated Fund for payment of loan guarantees (clause 16(a)):** Section 60 on payment of guarantee is proposed to be amended to require the Attorney-General to issue the Controller of Budget (CoB) with a certificate authorizing release of funds for purpose of payment of the loan guarantees.

It is noted that the Constitution, in Article 228(5) grants the Controller of Budget sufficient authority to satisfy self that any withdraw of funds from the Consolidated Fund is authorized by law. Further, Article 249(2)(b) clearly outlines that the Controller of Budget is independent and not subject to direction or control by any person or authority.

Thus, the proposed amendment that will require the CoB to get a certificate authorizing payment of guarantees from the Attorney-General seems to be going against the Constitutional provisions. This amendment may lead to cases where it can be misused (a case in point; Anglo-Leasing)

- x. **The County Revenue Fund to be kept in Central Bank of Kenya only and not in any other bank (clause 33):** Section 109(4) allows the County Treasury to keep the County Revenue Fund in either the Central Bank of Kenya or a bank approved by CEC Member for finance. The proposed amendment specifies that the County Revenue Fund will only be kept in the Central Bank of Kenya (because of TSA). It is not clear how counties in far flung areas will find this requirement convenient.
  
- xi. **The term limit for the Intergovernmental Budget and Economic Council membership is scrapped (clause 66):** Section 187 (3) that is proposed for deletion provides for the Intergovernmental Budget and Economic Council (IBEC) members to serve a maximum of two, two year terms. This essentially removes term limit for the appointed IBEC Members (representative of Parliamentary Service Commission, Judicial Service Commission, and CRA).

**Committee Resolutions**

The Committee resolved to invite the Cabinet Secretary, the National Treasury, to deliberate on the proposed amendments to the Bill.

**MIN.NO. DCF/211 /2015: ADJOURNMENT**

The Vice Chairperson adjourned the meeting at 1.10pm

Signed..........date..........

**Chairperson**

**MINUTES OF THE 56<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON TUESDAY 13<sup>TH</sup> OCTOBER, 2015 IN CPA ROOM, PARLIAMENT BUILDINGS AT 12:00 (NOON)**

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**PRESENT**

- |                                    |                         |
|------------------------------------|-------------------------|
| 1. Hon. Benjamin Langat, MP        | <b>Chairperson</b>      |
| 2. Hon. Nelson Gaichuhie, MP       | <b>Vice-Chairperson</b> |
| 3. Hon. Sammy Mwaita, MP           |                         |
| 4. Hon. Jimmy NuruAngwenyi, MP     |                         |
| 5. Hon. Ogendo Rose Nyamunga, MP   |                         |
| 6. Hon. ShakeelShabbir, MP         |                         |
| 7. Hon. Eng. Shadrack Manga, MP    |                         |
| 8. Hon. Anyanga Andrew Toboso, MP  |                         |
| 9. Hon. Ronald Tonui, MP           |                         |
| 10. Hon. Mary Emase, MP            |                         |
| 11. Hon. SumraIrshadali, MP        |                         |
| 12. Hon. Patrick MakauKing'ola, MP |                         |
| 13. Hon. Joseph Limo, MP           |                         |
| 14. Hon. Jones Mlolwa, MP          |                         |
| 15. Hon. Sakwa John Bunyasi, MP    |                         |
| 16. Hon. JoashOlum, MP             |                         |
| 17. Hon. Timothy Bosire, MP        |                         |
| 18. Hon. Abdul Rahim Dawood ,MP    |                         |

**ABSENT WITH APOLOGIES**

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Oburu Oginga, MP
3. Hon. Daniel Epuyo Nanok, MP
4. Hon. Lati Lelelit, MP
5. Hon Kubai Iringo, MP
6. Hon. Sammy Koech, MP
7. Hon. Tiras Ngahu, MP
8. Hon. Sakaja Johnson, MP
9. Hon. Kirwa Stephen Bitok, MP
10. Hon. Dennis Waweru, MP
11. Hon. Abdullswamad Shariff, MP

**IN ATTENDANCE**

- |                         |   |                                 |
|-------------------------|---|---------------------------------|
| 1. Mr. Micheal Karuru   | - | Deputy Director, Legal Services |
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant           |
| 3. Mr. Fredrick Otieno  | - | Third Clerk Assistant           |

4. Ms. Anncettah Gacheri - Research Officer
5. Ms. Doreen Karani - Legal Officer

#### **MIN.NO. DCF/238/2015: PRELIMINARIES**

The Chairperson called the meeting to order at 12:30pm followed by a word of prayer. He further reminded Members that the Committee had following pending business:

**i) 4 bills that have already gone through first reading**

- The Public Finance Management (Amendment) Bill, 2015
- The Tax procedures Bill, 2015
- The Betting, lotteries and Gaming (Amendment) Bill, 2015
- The Miscellaneous Fees and Levies Bill, 2015

Considering that the Committee had considered all the above Bills and tabled a report on the Tax Procedures Bill, the Secretariat was asked to urgently process reports on the remaining Bills (public Finance Management Amendment Bill, Betting, Lotteries and Gaming Amendment Bill, and the Miscellaneous fees and levies Bill) and attach consolidated amendments for tabling by the Chairman the following day. Consolidated amendments to the above Bills will only be considered for adoption once comments on the same have been received from the Cabinet Secretary for the National Treasury in line with Article 114.

**ii) 6 legislative proposals for prepublication scrutiny**

- Inclusive growth and coordination bill, 2015
- Tobacco control (Amendment) bill, 2015
- Parliamentary pensions (Amendment) Bill, 2015
- 2 Banking (Amendment) Bills, 2015
- Equalization Fund Bill, 2015

On legislative proposals, it was noted that the Committee has met with most of the sponsors and received comments the Attorney General, Kenya Law Reform Commission and Commission on Implementation of the Constitution. The Secretariat was asked to invite the remaining sponsors to brief the Committee when it next sits.

**iii) 6 petitions**

- degazettement of Legal Notice No.103(2) by Hon. Meruaki, MP
- Privatization of Muhoroni Sugar Factory by Hon. Kemei
- Amendment of the Constitution by Joel Kiprop
- Images on Kenyan currency by Mr. Muchiri
- Amendment of the Accountants of Kenya Act by Mr. Kariuki Musa

- Operationalization of Consumer protection Act by Cofek

**MIN.NO. DCF/239 /2015: CONSIDERATION OF PRESIDENTIAL MEMORANDUM ON EXCISE DUTY BILL, 2015**

Mr. Michael Karuru, Deputy Director Legal Services, informed the Committee as follows regarding the Presidential Memorandum:

- The President had expressed reservations on part 1 of paragraph 1 of the First Schedule of the Bill and consequently recommended amendments to various items in this schedule relating to fruit juices, cigarettes, motor vehicles and motorcycles.
- Article 115 (1) offers the President a limited role in the legislation, that is; assent or referral of a Bill to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.
- The Standing Order 154 requires the National Assembly to consider the President’s reservations within 21 days. The amendments by a Committee or an individual Member that have the effect of fully accommodating the presidents reservations will not attract two thirds requirement for passage and only Clauses of the Bill that have reservations will be considered.

**Committee Concerns**

- i) The Committee noted that the President has a limited legislative role under Article 115. However the referral of a Bill with effect of reverting it to the original format as it was presented to the house in effect raises the voting threshold for passing Bills.
- ii) The Legislative power of Parliament is constitutionally enshrined under article 94 (5) and its power exercised under Article 109 (1) through Bills passed by Parliament and assented by President.
- iii) There is worrying trend of the executive usurping Parliament’s legislative powers. Members should therefore be firm and reclaim what is rightly hers.

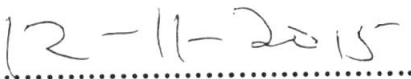
**Committee’s Resolution**

The Committee resolved to make a statement on the floor of the House regarding the President’s Memorandum on the Excise Duty Bill, 2015 highlighting the following:

- Due process was followed in passing the bill
- Undermining of Parliament’s legislative mandate by the Executive.
- The Committee disagrees with all the President reservations.
- Seek support of all Members of Parliament in rejecting the President’s recommendations

**MIN.NO. DCF/240/2015: ADJOURNMENT**

The Chairperson adjourned the meeting at 1.30 pm

Signed..........date..........  
**Chairperson**