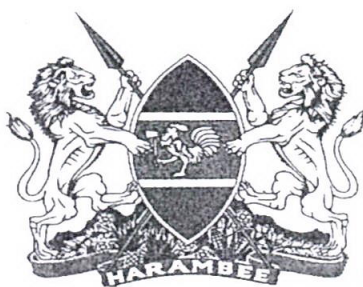


PARLIAMENT OF KENYA



KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

REPORT ON THE MESSAGE FROM THE SENATE ON THE ENVIRONMENTAL
MANAGEMENT AND CO-ORDINATION (AMENDMENT) BILL, 2014

CLERK'S CHAMBERS

APRIL, 2015

PARLIAMENT BUILDINGS

NAIROBI

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1.0 PREFACE

The Departmental Committee on Environment and Natural Resources is established under Standing Order No. 216(1).

1.1 Mandate of the Committee

The functions and mandate of the Committee are:-

- 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 the Ministries and departments and the effectiveness of the implementation;
- c) Study and review all legislation referred to it;
- d) Study, access and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with its 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; and
- g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The subject matter of the Departmental Committee on Environment and Natural Resources are stated in the Second Schedule of the National Assembly Standing Order as: climate change, environment management and conservation, forestry, water resource management, wildlife, mining and natural resources, pollution and waste management.

1.2 Committee Membership

The Committee comprises of the following Members:

Hon. Amina Abdallah, M.P., Chairperson	Hon. Kathuri Murungi, M.P.
Hon. Alex K. Kosgey, M.P., Vice Chairperson	Hon. Sunjeev Birdi, M.P.
Hon. Alice Ng'ang'a, M.P.	Hon. Jackson K. Rop, M.P.
Hon. Samuel Ndiritu, M.P.	Hon. Abdi Noor Ali, M.P.
Hon. Aisha Jumwa Karisa, M.P.	Hon. Joyce Emanikor, M.P.
Hon. Ejidius Njogu Barua, M.P.	Hon. Abdulaziz Farah, M.P.
Hon. Jude Njomo, M.P.	Hon. Ronald Tonui, M.P.
Hon. Moitalel Ole Kenta, M.P.	Hon. (Dr.) Reginalda Wanyonyi, M.P.
Hon. Chachu Ganya, M.P.	Hon. Gideon Mwitii, M.P.
Hon. Opiyo Wandayi, M.P.	Hon. (Major) Muluvi Mutua, M.P.
Hon. Charles G. Mongare, M.P.	Hon. Mohamed, Diriye M.P.
Hon. (Dr.) Wilber K. Ottichilo, M.P.	Hon. Peter Kinyua, M.P.
Hon. Khatib Mwashetani, M.P.	Hon. Shukra Hussein Gure, M.P.
Hon. George Ogalo, M.P.	
Hon. Chachu Ganya, M.P.	

1.3 Message from the Senate

1.4 Acknowledgement

Mr. Speaker Sir,

The Committee wishes to register its appreciation to the Offices of the Speaker and the Clerk of the National Assembly for the support accorded to the Committee in the execution of its mandate.

I take this opportunity to thank all Members of the Committee for their patience, endurance and dedication to Committee business, despite their other commitments and tight schedules, which enabled the Committee to complete this Report.

On behalf of the Departmental Committee on Environment and Natural Resources, and

pursuant to Standing Order No. 227 (2) of the National Assembly, I now have the honor to present the Committee Report on the message from the Senate on the Environmental Management and Co-ordination (Amendment) Bill, 2014

Thank You,

SIGNED

CHAIRPERSON

(HON. AMINA ABDALLA, M.P)

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE.....

CONSIDERATION OF THE SENATE MESSAGE ON THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (AMENDMENT) BILL, 2014

2.0 INTRODUCTION

2.0.1 The Environmental Management and Coordination (Amendment) Bill, 2014 was committed to the Senate on 4th December, 2014. The Senate considered the Bill and proposed amendments that were communicated to the House on The Amendments from the Senate were considered by the Committee during its Sitting on 21st April, 2015.

3.0 AMENDMENTS BY THE SENATE

Clause 9

THAT clause 9 of the Bill be amended in paragraph (a), in the proposed new paragraph (ba), by inserting the words "and their utilization and conservation", immediately after the words in Kenya.

Clause 10

THAT clause 10 of the Bill be amended in paragraph (d), by deleting the proposed new subsection (1) (f) and substituting therefor the following new subsection—

(1)(f) one person nominated by the Council of County Governors.

Clause 12

THAT clause 12 of the Bill be amended in the marginal note of the proposed new section 14 by deleting the word "Board" appearing immediately after the words "of the" and substituting therefor the word "Director-General and Directors"

Clause 20

THAT clause 20 of the Bill be deleted and substituted therefor with the following clause—

The principal Act is amended in subsection (1) of section 31 –

- (a) by deleting the words "Public complaints Committee" wherever it appears and substituting therefor the words "National Environmental Complaints Committee";
- (b) by deleting the words "two members" appearing at the beginning of paragraph (f) and substituting therefor the words "one member"; and
- (c) by inserting the following new paragraph immediately after paragraph (f);

- (g) one person who has demonstrated competence in environmental matters, nominated by the Council of County Governors.

Clause 23

THAT clause 23 of the Bill be amended in the proposed new section 37 –

- (a) by deleting the word “three” appearing immediately after the words “shall, within”, in subsection (1), and substituting therefor the word “two”; and
- (b) by deleting the word “six” appearing immediately after the words “Plan every”, in subsection (5), and substituting therefor the word “three”.

Clause 25

THAT clause 25 of the Bill be amended in the proposed new section 40 –

- (a) by deleting subsection (1) and substituting therefor the following new subsection–
 - (1) Every County Environment Committee shall within one year of the commencement of this Act and every three years thereafter, prepare a county environment action plan in respect of the county for consideration and adoption by the County Assembly”; and
- (b) by deleting the word “Cabinet Secretary” appearing immediately after the words “subsection (1) to the”, in subsection (3), and substituting therefor the word “Authority”.

Clause 40

THAT clause 40 of the Bill be amended in the proposed new section 56A, by deleting the words “the Authority” appearing at the beginning of the proposed new section and substituting therefor the words “the Cabinet Secretary”.

4.0 COMMITTEE RECOMMENDATIONS ON THE SENATE AMMENDMENTS TO THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (AMENDMENT) BILL, 2014

The Committee considered the proposed amendments by the Senate and recommended as follows:-

1. Clause (9) in the proposed new paragraph (ba)

Proposed amendment to clause 9 agreed to.

Justification

The amendment provides for the audit of utilization and conservation of resources.

2. Clause (10)

Proposed amendment to clause 10 was rejected.

Justification

The Senate proposal deletes the provision for the Attorney General or his representative to sit on the Board of the Authority and instead provides for a person nominated by the Council of County Governors. The Committee was of the opinion that National Environment and Management Authority (NEMA) is a national body mandated to perform functions that are vested in the National Government in accordance with the Act and in line with the Fourth schedule to the Constitution. Therefore there is no policy or legal justification for a representative of the Council of Governors to sit on the Authority. Further the proposed amendment seeks to replace the Attorney General or his representative with the representative of the Council of Governors therefore inadvertently placing the role of the representative of the Council of Governors at the same level as the legal advisory role the Attorney General plays, which is not the case.

3. Clause (12)

Proposed amendment to clause 12 agreed to.

It seeks to amend the marginal note of the proposed new section 14 by deleting the word "Board" appearing immediately after the words "of the" and substituting therefor the word "director-General and Directors"

Justification

The marginal note is misleading as it refers to "Remuneration of the Board" however the clause actually deals with remuneration of the "Director-General and Directors".

4. Clause (20)

Proposed amendment to clause 20 (a) agreed to, however proposed amendment to clause 20 (b) and 20(c) rejected.

Justification

The Senate proposal seeks to reduce the members appointed by the Minister under section 31(1) (f) from two members to one member appointed by the Minister for their active role in environmental management.

The proposal further provides for one person nominated by the Council of County Governors. The National Environmental Complaints Committee is established to investigate allegations or complaints against any person or the National Environment and Management Authority in relation to the condition of the environment in Kenya. It is therefore a national body mandated to perform functions that are vested in the National Government in accordance with the Act and in line with the Fourth schedule to the Constitution. Consequently there is no policy or legal justification for a representative of the Council of Governors to sit on the National Environmental Complaints Committee.

5. Clause 23

Proposed amendment rejected.

The Senate proposal reduces the time within which the Authority shall formulate the National Environmental Action Plan from three years to two years within commencement of the Act. The proposal also reduces the time within which the action plan shall be reviewed from every six year to every three years.

Justification

Based on experience, having an annual state of the environment report is unrealistic; the longer the planning period the better the report. The national environmental action plan also needs to be fed by the county plans which if done every three years would not be feasible.

6. Clause 25

Proposed amendment rejected.

The Senate proposal reduces the time within which the County Environment Committee shall prepare the county environment action plan from "two years of the commencement of this Act and every five years thereafter" to "one year of the commencement of this Act and every three years thereafter".

The proposal further provides for the submission of the county environment action plan by the County Executive Committee for incorporation into the national environment action plan to the "Authority" as opposed to the Cabinet Secretary.

Justification

Having a county environment action plan within one year of the commencement of the Act is unrealistic, further based on experience the longer the planning period the better the report produced.

Further the Cabinet Secretary is the person responsible for reporting of the national environment action plan therefore it goes that the submission of the county environment action

plan should be to the Cabinet Secretary so that it can be incorporated into the national environment action plan.

7. Clause 40

Proposed amendment to clause 12 agreed to.

Justification

Regulation making and issuance of guidelines is a function of the Cabinet Secretary.