

REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

ELEVENTH PARLIAMENT

THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

A REPORT ON THE PUBLIC FINANCE MANAGEMENT (STATE OFFICERS
AND PUBLIC OFFICERS MOTOR CAR LOAN SCHEME FUND)
REGULATIONS, 2015

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

APRIL, 2016

TABLE OF CONTENTS

ABBREVIATIONS	4
PREFACE	5
EXECUTIVE SUMMARY.....	9
CHAPTER ONE INTRODUCTION	11
1.1 The Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015	11
1.2 Legal Basis of the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015	11
1.3 Stakeholder Consultations on the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015	12
CHAPTER TWO COMMITTEE SCRUTINY AND OBSERVATIONS	13
2.1 Committee Observations	13
2.2 Response from the National Treasury	16
2.3 Committee meeting to consider the response from the National Treasury	16
CHAPTER THREE COMMITTEE RECOMMENDATIONS	17

Appendices

Explanatory Memorandum

The Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015

Minutes

ABBREVIATIONS

IRA Insurance Regulatory Authority

PFM Public Finance Management

PSC Public Service Commission

SEN. Senator

PREFACE

Establishment of the Committee on Delegated Legislation

The Sessional Committee on Delegated Legislation is established pursuant to the Senate Standing Order 214 which states:

- 1) There shall be a select Committee to be known as the Committee on Delegated Legislation.
- 2) Whenever a statutory instrument is submitted to the Senate pursuant to the Constitution, any law or these Standing Orders, the statutory instrument shall, unless a contrary intention appears in the relevant legislation, be laid before the Senate by the Chair of the Senate Committee on Delegated Legislation and thereafter stand referred to the Committee.
- 3) The Committee shall consider in respect of any statutory instrument whether the statutory instrument-
 - a) is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written law;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
 - d) directly or indirectly bars the jurisdiction of the courts;
 - e) gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
 - f) involves expenditure from the Consolidated Fund or other public revenues;
 - g) is defective in its drafting or for any reason, the form or purport of the statutory instrument calls for any elucidation;
 - h) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;

- i) appears to have had unjustifiable delay in its publication or laying before Parliament;
- j) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- k) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- l) inappropriately delegates legislative powers;
- m) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- n) appears for any reason to infringe on the rule of law;
- o) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
- p) accords to any other reason that the Committee considers fit to examine.

(4) If the Committee-

- a) resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant state department or the authority that published the statutory instrument;
- b) does not accede to the statutory instrument, or part of a statutory instrument, the Committee may recommend to the Senate that the Senate resolves that all or any part of the statutory instrument, as the case may be, be annulled.

(5) If the Senate-

- a) fails to agree to the recommendation of the Committee under paragraph (4)(b), the statutory instrument shall be deemed to have been approved by Parliament;
- b) resolves to annul a statutory instrument, or part of a statutory instrument, the resolution shall, within seven days of the passage of the resolution, be referred to the National Assembly for concurrence.

Membership of the Committee on Delegated Legislation

The Membership of the Committee is as follows:

- | | | |
|--------------------------|---|------------------|
| 1. Sen. Stephen Sang | - | Chairperson |
| 2. Sen. Judith Sijeny | - | Vice-Chairperson |
| 3. Sen. David Musila | - | Member |
| 4. Sen. Daniel Karaba | - | Member |
| 5. Sen. Stewart Madzayo | - | Member |
| 6. Sen. Godliver Omondi | - | Member |
| 7. Sen. Joy Gwendo | - | Member |
| 8. Sen. Emma Mbura | - | Member |
| 9. Sen. Hosea Onchwang'i | - | Member |

Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the execution of its mandate.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Section 17 of the Statutory Instruments Act, 2014 and Standing Order 214, to present the Report of the Sessional Committee on Delegated Legislation on the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015.

Signed.....



Date.....

15th April 2016

SEN. STEPHEN SANG,

CHAIRPERSON

SESSIONAL COMMITTEE ON DELEGATED LEGISLATION.

EXECUTIVE SUMMARY

The Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015 were published in the Kenya Gazette vide Legal Notice No. 195 of 2015 dated 25th September, 2015. The Regulations were tabled in the Senate on 14th October, 2015 pursuant to section 11 (3) of the Statutory Instruments Act, 2013 and Senate Standing Order 214 (2); and subsequently stood referred to the Sessional Committee on Delegated Legislation for scrutiny.

The Committee scrutinized the Regulations at its 23rd Sitting held on 15th October, 2015, 26th Sitting held on 11th November, 2015, 28th Sitting held on 18th November, 2015 and 2nd Sitting held on 9th March, 2016. The Committee noted that the Regulations had been transmitted without a copy of the Explanatory Memorandum in accordance with Section 11 of the Statutory Instruments Act, 2013. The Committee requested the National Treasury to submit a copy of the Explanatory Memorandum which it subsequently submitted via a letter dated 9th November, 2015.

Chapter one of this report, gives a summary of the purpose and legal basis of the Regulations. The Regulations aim to provide a car loan facility to state officers and public officers. This chapter also outlines the National Treasury's submission on stakeholder consultations as outlined in the Explanatory Memorandum. The National Treasury indicated that extensive consultations were done prior to the publication of the Regulations with key stakeholders such as the Public Service Commission, Teachers

Service Commission, Judicial Service Commission, the Directorate of Public Service Management and Accounting Officers of the National Government.

Chapter two gives an account of the Committee scrutiny of the Regulations as well as its observations. The Committee noted that Regulation 9 establishes an Advisory Board, the secretariat and the financial institution which are superfluous levels of management and possible sources of bureaucracy; that would occasion additional expenditure in the management of the Fund and tie down funds which could otherwise be available to the Scheme in administration costs. Members further noted that the Fund could be administered by existing administrative mechanisms within the PSC. The Committee invoked Section 16 of the Statutory Instruments Act and requested the National Treasury to provide its rationale for the establishment of the Advisory Board.

Chapter three outlines the Committee Recommendations. The Committee considered and concurred with the rationale given by the National Treasury for the establishment of the Advisory Board. The Committee accedes to the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015.

CHAPTER ONE INTRODUCTION

1.1 The Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015

The Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015 were published in the Kenya Gazette vide Legal Notice No. 195 of 2015 dated 25th September, 2015. The purpose of the Regulations is to-

1. Provide a car loan facility to state officers and public officers of the national government to purchase a motor car as prescribed in the regulations;
2. Cater for administrative expenses of the Fund;
3. Specify the sources, object and purpose of the Fund;
4. Provide guidance on the administration and management of the Fund;
5. Establish an Advisory Board to advise the Cabinet Secretary on the proper and effective performance of the Fund;
6. Provide for the withdrawals from the Fund; and
7. Provide for the winding up of the Fund.

1.2 Legal Basis of the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015

Section 24(4) of the Public Finance Management Act, 2012 provides for the Cabinet Secretary's power to make Regulations in the following terms:

24(4) "The Cabinet Secretary may establish a national government public fund with the approval of the National Assembly."

1.3 Stakeholder Consultations on the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015

The National Treasury, by a letter dated 9th November, 2015, submitted the Explanatory Memorandum to the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015. The National Treasury indicated that extensive consultations were done during the development of the Regulations with key stakeholders and their input taken into account prior to the publication of the Regulations. Some of the key stakeholders consulted were the Public Service Commission, Salaries and Remuneration Commission, Teachers Service Commission, Judicial Service Commission, Directorate of Public Service Management and Accounting Officers of National Government.

CHAPTER TWO COMMITTEE SCRUTINY AND OBSERVATIONS

The Committee scrutinized the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015 at the following sittings-

1. 23rd Sitting, held on 15th October, 2015;
2. 26th sitting held on 11th November, 2015;
3. 28th Sitting held on 18th November, 2015; and
4. 2nd Sitting held on 9th March, 2016.

2.1 Committee Observations

The Committee raised the following pertinent issues-

1. Regulation 9 establishes an eight member Advisory Board that is likely to be in favor of the National Treasury, who will have three (3) positions. Furthermore, the parties that determine the terms and conditions of the Board are closely linked to the Board. This therefore raises questions on the transparency capacity of the Board and also raises doubts on matters of corporate governance. A reconstruction of the Board may be required to enhance a neutral Board perspective and to facilitate transparency.
2. Regulation 18 refers to the procurement of a financial institution to carry out functions as indicated under Regulation 19. The institution is allowed to charge an additional 2% p.a. interest on loans to cover for managerial costs. This could raise loan borrowing costs charged to the beneficiaries from the intended 3% to 5%.

3. In general, the Committee noted that the Board, the secretariat and the financial institution are superfluous levels of management and possible sources of bureaucracy that would occasion additional expenditure in the management of the Fund and tie down funds which could otherwise be available to the scheme in administration costs.
4. Noting similar funds under Parliamentary Service Commission, Judiciary Service Commission as well as the Central Bank scheme that are all managed by internally set mechanisms i.e. staff and internally allocated resources; the Committee noted there would be no need for the Board, the secretariat and even the financial institution if there already exists a Public Service Commission (PSC), mandated to develop human resource in the public service. Existing administrative mechanisms within the PSC i.e. trained staff, public sector data/information, is an advantage and could be used to provide a more cost effective means of administering the Fund.
5. Under Regulation 14 on insurance in respect of motor car loan; the Advisory Board is mandated to approve the insurance companies from which the borrower can obtain a comprehensive motor car insurance policy. It is not expected that the Board will have the technical capacity to review and approve an insurance company.
 - It is therefore recommended that the list of insurance companies be as approved by the Insurance Regulatory Authority (K) and recommended to the

Advisory Board and that the IRA will be mandated to inform the Board on any changes to that list.

6. Concern was raised on whether the relevant stakeholders i.e. public officers, were consulted in the development of the Regulations. In addition, it was noted that some stakeholders consulted already form part of the proposed Advisory Board such as the Public Service Commission and the Salaries & Remuneration Commission thus questioning the diversity of the consultation process. Lastly, it was noted that the Judiciary Service Commission was consulted even though they are not affected by the Regulations.
7. The penalty provided under Regulation 27 of *“imprisonment for a term of not less than five years or to a fine not exceeding 10 million shillings” exceeds the limits set under Section 24(5) of the Statutory Instruments Act, 2015*. However, Members raised concern on the practicality of applying the provisions of the Act to the offence of misappropriation of funds or assets from the Fund. The penalty provided under the Act of a fine not exceeding twenty thousand or imprisonment for a term not exceeding six months may be too lenient.

The Committee having taken into consideration the above observations, noted that annulment of Regulation 9 of the PFM (State Officers and Public Officers Car Loan Scheme Fund, Regulations, 2015 would result in the annulment of several other Regulations where the Board appears. Consequently, the Committee invoked Section 16

of the Statutory Instruments Act, 2013 and requested the National Treasury to provide the rationale for the establishment of the Board to enable the Committee make an informed decision before tabling its Report in the House.

2.2 Response from the National Treasury

The National Treasury via a letter dated 2nd December, 2015 gave its rationale for the establishment of the Advisory Board. The Ministry noted that whereas the establishment of the Advisory Board would occasion additional expenditure, the National Treasury considered the following:

- i. The need to put in place a body to oversee the expenditure of the funds, considering the large sums of money to be managed by the Fund Secretariat;
- ii. To foster accountability and transparency in the management of the Funds;
- iii. To ensure representation of the stakeholders as provided for in Article 201 of the Constitution; and
- iv. To ensure good governance and equity in accessing the benefits.

The National Treasury therefore noted that the benefits of establishing the Advisory Board outweigh the expenditure on the same.

2.3 Committee meeting to consider the response from the National Treasury

The Committee, at its 2nd Sitting held on 9th March, 2016 considered and concurred with the rationale given by the National Treasury for the establishment of the Advisory Board.

CHAPTER THREE COMMITTEE RECOMMENDATIONS

The Committee accedes to the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015.

APPENDICES

EXPLANATORY MEMORANDUM TO THE PUBLIC FINANCE MANAGEMENT (STATE OFFICERS AND PUBLIC OFFICERS CAR LOAN SCHEME FUND) REGULATIONS, 2015

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PART I

1. Name of the Statutory Instrument: Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015.

Name of the Parent Act: Public Finance Management Act, 2012

Enacted Pursuant to: Section 24 of the Public Finance Management Act, 2012

Name of the Ministry/ Department: The National Treasury

PART II

2. **The Purpose of Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015.**

The purpose of these Regulations is to:

- (i) Provide a car loan facility to state officers and public officers of the national government to purchase a motor car as prescribed in these regulations;
- (ii) Cater for administrative expenses of the Fund;
- (iii) specify the sources, object and purpose of the Fund;
- (iv) provide guidance on the administration and management of the Fund;
- (v) establish an Advisory Board to advise the Cabinet Secretary on the proper and effective performance of the Fund;
- (vi) provide for the withdrawals from the Fund; and
- (vii) provide for the winding up of the Fund.

3. **The Legislative Context**

The Salaries and Remuneration Commission (SRC) in fulfillment of its Constitutional mandate and in exercise of the powers conferred to it under Article 230 of the Constitution and Section 13 of the Salaries and

Remuneration Act, 2011, set and advised on car loan benefits to all state officers and other public officers in Kenya vide the Circular Ref. No. SRC/ADM/ CIR/ 1/13 Vol. III (128) dated 17th December, 2014.

In order to operationalize the provisions of this SRC Circular and provide a legal framework geared towards safeguarding and ensuring prudent use of public resources, the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015 were developed pursuant to Section 24 of the Public Finance Management Act, 2012. The Public Finance Management Act, 2012 gives powers to the Cabinet Secretary responsible for matters relating to finance to make further regulations on any matter therein. It is in this context that the *"The Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2014"* are made to operationalize car loan benefits to all state officers and other public officers under Section 24 of the Public Finance Management Act, 2012 by providing a mechanism for use of this Fund. In addition, the Regulations are made to provide the management structure of the Fund.

4. Policy Background.

The Constitution assigned the duty to decide on the policy for setting the benefits of State Officers under the Constitution and any other Act of Parliament. Further, the Constitution provides that benefits and allowances of State Officers of the National Government and county governments shall be set by the Salaries and Remuneration Commission. In addition, Section 24 of the Public Finance Management Act, 2012 has assigned the duty to establish national public funds to the Cabinet Secretary responsible for matters relating to finance.

Accordingly, the National Government has decided that the State Officers and Public Officers Car Loan Scheme shall need a robust management structure to ensure the schemes objectives are achieved through an open, transparent and accountable mechanism. The management structure has been provided for in the Regulations. In addition, the Fund shall be applicable to state officers and other public officers who are not covered by any other scheme working at the national government level and shall not apply to other public officers under the National Government working in Constitutional Commissions, Independent Offices, State Corporations and National Security Organs.

5. Public Consultations

Extensive consultations were done while preparing the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015 with key stakeholders and their input taken into account before finalization of these Regulations. Some of the key stakeholders'

consulted were Public Service Commission, Salaries and Remuneration Commission, Teachers Service Commission, Judicial Service Commission, Directorate of Public Service Management and Accounting Officers of National Government.

6. Guidance

The National Treasury will sensitize stakeholders including Parliament, State Officers and Other Public Officers, accounting officers of National Government and the general public, on the process of accessing the State Officers and Public Officers Car Loan Scheme, the accountability mechanism, the monitoring and evaluation mechanism and the need to ensure regular reporting to Parliament.

7. Impact Assessment

An impact assessment has not been prepared for this statutory instrument. (Expected impact is, however, implied in the State Officers and Other Public Officers Car Loan Scheme determined by the Salaries and Remuneration Commission.

8. Review of the Marginalized Counties.

The National Treasury shall monitor the application of the State Officers and Other Public Officers Car Loan Scheme. This will be done through quarterly reports sent by the Administrator of the Fund. In addition, the Fund Secretariat at the National Treasury will also carry out regular monitoring and evaluation of the State Officers and Public Officers Car Loan Scheme.

9. National Treasury Contact Person.

The contact person at the National Treasury is the Mr. Henry Rotich, Cabinet Secretary, or Dr. Kamau Thugge, EBS, Principal Secretary

HENRY ROTICH
CABINET SECRETARY TO THE NATIONAL TREASURY

Date.....

SPECIAL ISSUE

Kenya Gazette Supplement No. 166

1133

25th September, 2015

(Legislative Supplement No. 67)

LEGAL NOTICE NO. 195

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 24(4) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury makes the following Regulations:—

**THE PUBLIC FINANCE MANAGEMENT (STATE OFFICERS
AND PUBLIC OFFICERS MOTOR CAR LOAN SCHEME FUND)
REGULATIONS, 2015**

- | | |
|---|-----------------|
| 1. These Regulations may be cited as the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015. | Citation. |
| 2. In these Regulations, unless the context otherwise requires— | Interpretation. |
| “Accounting Officer” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012; | No. 18 of 2012. |
| “Accounting Standards Board” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012; | No. 18 of 2012. |
| “Advisory Board” means the Loans Management Advisory Board established under regulation 9; | |
| “beneficiary” means State Officers and Public Officers working in the National Government as prescribed in regulation 31; | |
| “borrower” means a person in receipt of a loan out of the Fund; | |
| “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance; | |
| “Chief Executive Officer” means the Chief Executive Officer of the Fund appointed under regulation 20; | |
| “commercial use” means any motorised road vehicle, that by its type of construction and equipment is designed for, and capable of transporting, goods and services for payment; | |
| “financial institution” means any institution referred to in regulation 19 identified for the purposes of providing financial services to the Fund; | |
| “financial year” means the period of twelve months ending on the 30th June in each year; | |
| “Fund” means the State Officers and Public Officers Car Loan Scheme Fund established under regulation 3; | |

"Motor car" has the meaning assigned to it under section 2 of the Traffic Act; Cap. 403.

"Officer administering the Fund" means a person designated as such under section 24(5) of the Public Finance Management Act, 2012; No. 18 of 2012.

"Public Officer" means an officer employed in the National Government or the Public Service;

"revenue" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012; No. 18 of 2012

"State Officers" has the meaning assigned to it under Article 260 of the Constitution but shall not include a state officer who is covered by any public motor car loan scheme; and

"value of the loan" the initial loan granted to a beneficiary or any outstanding loan balance at any given time before full loan repayment.

PART II—ESTABLISHMENT OF THE FUND

3. There is established a Fund to be known as the State Officers and Public Officers Car Loan Scheme Fund. Establishment of the Fund.

4. The object and purpose of the Fund shall be to—

Object and Purpose of the Fund.

(a) provide a car loan facility to state officers and public officers of the national government to purchase a motor car as prescribed in these Regulations; and

(b) cater for administrative expenses of the Fund

5. The initial capital of the Fund shall be one billion Kenya shillings appropriated by Parliament in the financial year 2014/15 and additional capital of the Fund shall be made in the subsequent financial years' budgets. Capital of the Fund.

6. There shall be paid into the Fund—

Sources of the Fund.

(a) monies appropriated by Parliament for the purposes of the Fund;

(b) income from investments made by the Fund;

(c) grants, donations, bequests or other gifts made to the Fund; and

(d) monies from any other source approved by the Cabinet Secretary.

7. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established. Expenditure of the Fund.

(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual budget estimates prepared by the officer administering the Fund and shall be recommended by the Advisory Board for approval by the Cabinet Secretary at the beginning of the financial year to which they relate.

(3) Any revision of the approved budget estimates, and of any cost estimate, shall be referred to the Advisory Board and the Cabinet Secretary for approval.

8. The Officer administering the Fund, in consultation with the Advisory Board shall develop guidelines for the proper management of the Fund for approval by the Cabinet Secretary.

Guidelines on the Fund

PART III—MANAGEMENT OF THE FUND

9. (1) There is established an Advisory Board of the Fund.

Establishment and composition of the Advisory Board.

(2) The Advisory Board shall comprise—

- (a) the Principal Secretary for the National Treasury or his or her nominee who shall not be below Job Group "T", who shall be the Chairperson;
- (b) the Principal Secretary of the State Department responsible for Public Service Management or his or her nominee who shall not be below Job Group R;
- (c) the Principal Secretary of the State Department responsible for Transport or his or her nominee drawn from the relevant technical department dealing with matters of motor car and shall not be below Job Group R;
- (d) the Chief Executive Officer or Secretary, Salaries and Remuneration Commission or his or her nominee who shall not be below the level of a director;
- (e) the Chief Executive Officer or Secretary, Public Service Commission or his or her nominee who shall not be below Job Group "R"; and
- (f) two persons nominated by the Principal Secretary for the National Treasury who shall not be below Job Group R, from the Directorates of—
 - (i) Budget, Financial and Economic Affairs; and
 - (ii) Administrative Services.

(3) The Chief Executive Officer of the Fund shall be the Secretary to the Advisory Board.

(4) The terms and conditions of service of members of the Advisory Board and the Secretariat shall be as determined by the Cabinet Secretary in consultation with the Public Service Commission and the Salaries and Remuneration Commission.

10. (1) The functions of the Advisory Board shall be to—

Functions of the Advisory Board.

- (a) process and approve loans in accordance with the existing terms and conditions of borrowing;
- (b) liaise with the financial institution to set up a Fund for the disbursement of the loans;

- (c) oversee the management of the Fund;
- (d) monitor and evaluate the performance of the Fund;
- (e) approve annual work programmes and procurement plans for the Fund;
- (f) recommend the investment of any surplus funds not immediately required in securities approved by the National Treasury, for the purposes of realizing the objects and purpose for which the Fund is established;
- (g) cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Fund;
- (h) receive any gifts, donations, grants or endowments made to the Fund;
- (i) consider and recommend approval of the financial statements to the officer administering the Fund;
- (j) recommend as when required the procurement of a financial institution to administer the Fund on its behalf ;
- (k) perform any other functions that are ancillary to the objects and purpose for which the Fund is established; and
- (l) determine its own procedures for conducting its business.

11. The maximum loan each beneficiary shall be eligible to, is set out in the Schedule to these Regulations or as may be determined by the Salaries and Remuneration Commission, from time to time.

Car loan threshold.

12. (1) An application for a loan under these Regulations shall be accompanied by the following documents where appropriate—

Loan application procedure.

- (a) an application form duly filled by the applicant;
- (b) a certified copy of the National Identify Card or Passport of the applicant;
- (c) copies of pay-slips for the immediate last three months certified by the respective accounting officers;
- (d) a certified copy of the sale agreement relating to the motor car;
- (e) a certified copy of the log book;
- (f) a non-refundable application fees of one thousand shillings or as determined from time to time by the officer administering the Fund; and
- (g) a valuation report on the motor car.

(2) For the purposes of these Regulations, the value of a new vehicle shall be as quoted on the invoice from the supplier whereas the value of a used vehicle shall be as determined by a report from the Automobile Association of Kenya, a Government Department dealing with similar matters or a certified automobile valuer registered in Kenya.

(3) For the purposes of these Regulations, a loan shall not be given to a beneficiary to purchase a used vehicle that is more than eight years old from the date of manufacture or as may be determined from time to time.

(4) The applicant shall bear the cost of valuation, registration and other legal fees.

13. (1) The officer administering the Fund shall use the following eligibility criteria when evaluating a loan application—

Eligibility criteria.

- (a) first in first out principle of loan processing;
- (b) applicable loan threshold for each grade of the beneficiary;
- (c) compliance with the provisions of regulation 12;
- (d) ability to repay the loan within existing statutes and the stipulated time;
- (e) an undertaking by the beneficiary that the motor car shall jointly be registered and owned for the period of the loan by the National Treasury on behalf of the Government of Kenya and the beneficiary until the loan is repaid in full by the beneficiary;
- (f) an undertaking to meet such costs for the purpose of securing a motor car comprehensive insurance cover and pay such sum of money on or before thirty days before the expiry of the comprehensive motor car insurance policy as may be determined by the officer administering the Fund from time to time;
- (g) no borrower shall be eligible for more than one loan at a time from the Fund within five years; and
- (h) any other conditions as may be prescribed by the officer administering the Fund.

14. A borrower shall take and maintain a comprehensive motor car insurance policy with an insurance company approved by the Advisory Board, the cost of which shall be paid out of the Fund and debited to the borrower's account.

Insurance in respect of motor car loan.

15. (1) A loan approved by the Advisory Board under these Regulations shall be released from the Fund to the bank account of the supplier or seller of the motor car.

Conditions for disbursement of Funds.

(2) Notwithstanding the provisions of paragraph (1), a person disbursing the funds shall confirm that the beneficiary has complied with regulations 12 and 13 of these Regulations.

(3) The officer administering the Fund shall issue a caveat prohibiting the transfer of the motor car and shall notify the Registrar of Motor Vehicles accordingly.

(4) The Registrar of Motor Vehicles shall confirm in writing to the officer administering the Fund, that a caveat issued under paragraph (3) has been entered and noted in the appropriate motor car file or data base in the registry of the Registrar of Motor Vehicles.

(5) During the loan repayment period the beneficiary shall—

- (a) not lease, sell or agree to sell or part with possession of the charged motor car or any part of the motor car without the prior written consent of the officer administering the Fund;
- (b) meet costs for the motor car comprehensive insurance cover and pay such sum of money as may be determined by the officer administering the Fund from time to time;
- (c) ensure that the motor car is not used for commercial purposes; and
- (d) maintain the motor car in a satisfactory state of repair.

(6) All legal documentation and disbursement of funds shall be supervised by the Advisory Board.

(7) The officer administering the Fund shall be the custodian of the motor car log book until the loan is repaid in full by the beneficiary and thereafter the Officer Administering the Fund shall transfer the motor car log book to the beneficiary in his or her name within ninety days after full repayment of the loan.

(8) Upon receiving the motor car log book in his or her name, the beneficiary shall sign a discharge form confirming receipt of the motor car log book from the Officer Administering the Fund.

16. (1) A loan advanced under these Regulations shall be repaid in full within sixty months. Loan repayment.

(2) The preferred method of loan repayment shall be through a check-off system or a bank standing order by the beneficiary.

(3) Notwithstanding the provisions of paragraph (1), where a state officer or public officer leaves public service employment for whatever reason other than disciplinary grounds, the terms of the loan shall remain in force and shall not change for the life of the loan unless in cases of default in which case it shall revert to commercial terms.

(4) Where a beneficiary leaves the public service on disciplinary grounds, the terms of the loan shall convert to commercial terms after ninety days from the effective date of leaving the service.

(5) Where a default occurs for whatever reason there shall be a grace period of not more than three months, after which the car which is subject to the loan shall be repossessed and sold to recover the balance of the loan.

(6) Where a repossession of a motor car occurs under paragraph (5), the Officer Administering the Fund shall repossess the motor car within twenty one working days and the motor car shall be disposed-off within ninety days from the date of repossession to recover the loan balance.

(7) Where a motor car has been disposed-off under paragraph (6) and the amount recovered is not sufficient to cover the entire loan balance, the Officer Administering the Fund shall require the loan beneficiary to pay the difference.

(8) Any disposal of a motor car under paragraph (5) by the Officer Administering the Fund shall be through a public auction or private treaty

17. A loan granted to a member under these Regulations shall carry an interest rate of three per cent per annum on a reducing balance basis which shall be retained in the Fund or such other rate as may from time to time be determined by the Cabinet Secretary in a gazette notice.

Loan interest.

18. (1) The Fund or where applicable, the financial institution referred to under these Regulations may charge an interest of not more than two percent per annum of the value of loan to cover its management costs.

Management cost.

(2) The interest charged under regulation 17 and 18(1) shall be paid by the borrower.

19. (1) The responsibilities of a financial institution procured under these Regulations shall be to—

Responsibilities of the financial institution.

- (a) maintain and operate an individual account for each beneficiary;
- (b) charge securities on motor cars acquired through loans from the Fund so as to protect the interest of the Fund, and act as a custodian of such charges;
- (c) disburse monies for newly approved loans to various suppliers or sellers of motor cars to beneficiaries, after the necessary communication in writing authorizing disbursement to them by the officer administering the Fund;
- (d) pay all outgoing and issue demand notices to defaulting borrowers through the officer administering the Fund;
- (e) issue an annual account statement to the Officer Administering the Fund for each borrower;
- (f) upon repayment of the motor car loan, interest and other expenses which may be outstanding discharge the charge and release the security documents to the beneficiaries; and
- (g) provide quarterly reports on details of recovery of the loans to the Officer Administering the Fund.

(2) The expenses of the Fund Secretariat shall be met from funds provided by Parliament for that purpose which shall include but not limited to appropriations, earnings, accruals and shall not exceed five per cent of the annual approved budget of the Fund.

20. (1) There shall be a Chief Executive Officer of the Fund who shall be recruited and appointed through a competitive process subject to the provisions of Article 234 (5) of the Constitution.

Chief Executive Officer.

(2) A person is qualified for appointment as the Chief Executive Officer if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree in economics, finance, accounting or social sciences from a university recognized in Kenya;
- (c) satisfies the requirements of Chapter Six of the Constitution; and
- (d) has at least ten years' experience in the relevant field.

(3) A person appointed as the Chief Executive Officer under this regulation, shall serve for one term of five years, which may be renewed for one further term of five years.

(4) The Chief Executive Officer shall be subject to the directions of the Advisory Board and shall be responsible for the day to day administration of the affairs of the Fund and the Secretariat of the Fund as delegated by the Advisory Board.

21. (1) There shall be a Secretariat of the Fund to be headed by the Chief Executive Officer.

Secretariat of the Fund.

(2) The composition of the Secretariat shall be determined by the Cabinet Secretary subject to Article 234 (2) of the Constitution.

(3) The terms and conditions of service for the Chief Executive Officer and the Fund Secretariat shall be determined by the Cabinet Secretary in consultation with the Public Service Commission and the Salaries and Remuneration Commission.

22. All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year, shall be retained by the Fund for strict use for the purpose for which the Fund is established.

Retention of receipts.

23. Subject to the provisions of the Act, any other legislation, the existing Government Regulations and Procedures shall apply in the administration of the Fund.

Application of Government Regulations and procedures.

24. (1) The Chief Executive Officer shall be designated as the administrator of the Fund.

Administration of the Fund.

(2) The administrator of the Fund shall—

- (a) open and operate a bank account into which all monies raised under the Fund shall be paid into;
- (b) operate and maintain the bank account in the manner as prescribed by the National Treasury from time to time;
- (c) supervise and control the administration of the Fund;
- (d) consult with the Advisory Board on matters relating to the administration of the Fund;
- (e) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund;
- (f) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end

thereof, a statement of accounts relating to the Fund and submit a copy to the National Treasury and the statements shall be prepared in such a manner as the Public Sector Accounting Standards Board shall prescribe;

- (g) furnish any additional information which is proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act;
- (h) prepare a quarterly report on the receipts into and issues out of the Fund and submit it to the Cabinet Secretary for gazettment by the 10th day of every fourth month.
- (i) prepare estimates of revenue and expenditure and submit to the Advisory Board for consideration and recommendation for approval by the Cabinet Secretary; ;
- (j) prepare a work plan in respect of a financial year and in preparing this work plan they shall ensure that the work plan—
 - (i) contains information on the financial and non-financial performance of the Fund; and
 - (ii) is in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time; and
- (k) prepare quarterly financial statements to the Advisory Board for onward transmission to the National Treasury.

Cap 421 C.

(2) Every statement of account shall include details of the balance between the assets and liabilities of the Fund, and shall indicate the financial status of the Fund as at the end of the financial year concerned.

PART V—FINANCE AND ADMINISTRATION

25. (1) A bank account of the Fund shall be opened and maintained at the Central Bank of Kenya or a bank approved by the National Treasury.

Fund Bank Account".

(2) The signatories to the bank account of the Fund under paragraph(1) shall be the Chief Executive Officer and two other persons authorized by the Advisory Board from amongst the staff of the Fund.

(3) The signing instructions shall be such that the signature of the Chief Executive Officer shall be mandatory on all payment cheques and instruments intended for actual release of money from the Fund, plus any one of the other two Fund account signatories.

26. (1) All withdrawals from the Fund shall be recommended by the Chief Executive Officer and authorized by the Advisory Board as reflected in the Fund's approved annual estimates of expenditure for that financial year.

Withdrawal of funds from the Fund

(2) All payments made from the Fund shall be on the basis of the approved annual estimates of expenditure.

PART IV — MISCELLANEOUS PROVISIONS

27. A person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term of not less than five years or to a fine not exceeding ten million shillings or to both.

Offences and penalties.

28. In the event of winding up of the Fund, the cash balances shall be transferred to the National Exchequer Account while other assets of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to finance.

Winding-up of the Fund.

29. These Regulations shall be supplemented by such requirements as may be detailed in the loan application form issued by the Officer Administering the Fund and by the contract between the Fund and the beneficiary.

Supplementary requirements.

30. The Advisory Board may from time to time recommend to the Cabinet Secretary any amendments to these Regulations.

Amendments to these Regulations.

31. (1) These Regulations shall apply to—

Persons to whom these Regulations shall apply.

(a) State Officers in the national government except state officers under the service of Judicial Service Commission and Parliamentary Service Commission; and

(b) Civil Servants under the service of Public Service Commission.

SCHEDULE

LOAN THRESHOLD FOR STATE OFFICERS AND OTHER PUBLIC OFFICERS

<i>Beneficiaries</i>	<i>Maximum Car Loan (KSh.)</i>
State Officers	
Cabinet Secretary Attorney-General Secretary to the Cabinet Auditor-General	10 million
Principal Secretaries Chairs and Members of Independent Commissions Controller of Budget	8 million
Director of Public Prosecution	6 million
Register of Political parties Secretaries of Independent Constitutional Commissions, Accounting Officers/Chief Executive Officers of Government Agencies	5 million

<i>Beneficiaries</i>	<i>Maximum Car Loan (KSh.)</i>
Other Public Officers	
Chief Executive Officers of Government Agencies or Organs	5 Million
Civil Service Grades S, T, U and Equivalent grades in public service	4 Million
Civil Service Grades P, Q, R and Equivalent grades in the public service	3 Million
Civil Service Grades K, L, M, N and Equivalent grades in the public service	1.5 Million
Civil Service Grades G, H, J and Equivalent grades in the public service	800,000
Civil Service Grades A, B, C, D, E, F and Equivalent grades in the public service	600,000

Made on the 8th September, 2015.

HENRY K. ROTICH,
Cabinet Secretary for the National Treasury.

MINUTES OF THE 23RD SITTING OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 15TH OCTOBER, 2015 AT 9.00 A.M . IN THE 2ND FLOOR BOARDROOM, KICC

PRESENT

1. Sen. Judith Sijeny - Vice-Chairperson
2. Sen. Boy Juma Boy
3. Sen. Liza Chelule

ABSENT WITH APOLOGY

1. Sen. Stephen Sang - Chairperson
4. Sen. Daniel Karaba
2. Sen. Godliver Omondi
3. Sen. Emma Mbura
4. Sen. (Dr.) Boni Khalwale
5. Sen. Joy Gwendu

IN ATTENDANCE

1. Sen. David Musila

IN ATTENDANCE

SENATE

- | | |
|--------------------------|--------------------|
| 1. Ms. Josephine Kusinyi | - Legal Counsel |
| 2. Ms. Carol Kirorei | - Committee Clerk |
| 3. Ms. Grace Wahu | - Research Officer |
| 4. Mr. James Machage | - Budget Officer |

MIN. NO. 162/2015

- PRELIMINARIES

The Vice-Chairperson called the meeting to order at 9.16 a.m. followed by a word of prayer.

MIN. NO. 163/2015**- ADOPTION OF THE AGENDA**

The agenda of the sitting was adopted as presented having been proposed by Sen. Liza Chelule and seconded by Sen. Boy Juma Boy.

MIN. NO. 164/2015**-CONFIRMATION OF PREVIOUS MINUTES**

The minutes of the 22nd sitting were confirmed as a true record of the proceedings after being proposed by Sen. Liza Chelule and seconded by Sen. Boy Juma Boy.

MIN. NO. 165/2015**- CONSIDERATION OF THE PUBLIC FINANCE
MANAGEMENT (STATE OFFICERS AND PUBLIC
OFFICERS MOTOR CAR LOAN SCHEME FUND)
REGULATIONS, 2015**

The Budget Officer gave a brief of the Public Finance Management (State Officers and Public Officers Motor Car Loan Scheme Fund) Regulations, 2015 as follows-

1. The regulations aim to establish a fund known as the State Officers and Public Officers Car Loan Scheme Fund whose purpose shall be to provide a car loan facility to state officers and public officers of the national government to purchase a motor car and to cater for administrative expenses of the fund;
2. A public officer is an officer employed in the national government/public service; while the state officers' definition follows the meaning assigned under Article 260 of the Constitution but excludes those covered in any public motor car loan scheme;
3. The minimum capital for the Fund shall be Kshs. 1 billion appropriated by Parliament in FY 2014/15 with additional capital made in subsequent financial budgets. The fund shall either be domiciled at the Central Bank of Kenya or in a bank approved by the National Treasury with signatories to either bank account being the Chief Executive Officer (mandatory) and 2 persons authorized by the advisory board amongst the staff.
4. The Fund shall be managed by an 8 member (inclusive of the CEO) advisory board whose functions shall be to process and approve loans, oversee the management of the fund, monitor and evaluate the fund approve annual work

programs and procurement plans of the fund, recommend investment of surplus funds of the fund, among other functions.

5. The regulations also establishes a Fund Secretariat whose composition shall be determined by the cabinet secretary and whose expenses shall be met out of funds provided by parliament but shall not be limited to appropriations, earnings accruals and shall be limited to 5% of the annual approved budget of the fund.
6. In applying for a loan an applicant shall pay a fee of Ksh. 1000 and the application shall be accompanied by documents such as certified copies of the national ID or passport, copies of pay slips, copy of the sale agreement, certified copy of the logbook etc.
7. The maximum loan an applicant shall be eligible to shall be as indicated in the regulation schedule, and shall be applicable once every five year. If application successful, the loan is to be repaid in full within *60 months (5 years)* at a rate of *3% per annum* although the financial institution procured to operate the fund can charge up-to of 2% extra on the loan to cover for fund management costs.
8. The preferred method of loan repayment system shall be through check off system of a bank standing order by the beneficiary. The terms of loan do not change if the beneficiary leaves public service employment.

He noted that the Regulations are likely to have a wide range of effects in 3 major areas being-

a. Promotion to the insurance sector

As a standard for qualification for the loan facility according to the regulations, a beneficiary will be required to take and maintain comprehensive motor car insurance. This is likely to have positive impact on the Kenyan insurance industry which is vital in risk management and attracting investment into the economy.

b. Effects on patterns and levels of vehicle importation in Kenya

Vehicle importation patterns in Kenya are likely to increase and stress the existing road infrastructure already in place, and there is the possibility that new road infrastructural developments might not be able to cope with this growing trend. This is likely to effect on the amount of resources allocated by county governments to infrastructure as these units might have to allocate more resources for road maintenance and expansion.

c. Effects on the current account balance

The proposed regulations are likely to have an incremental effect on the importation of vehicle and vehicle spare parts into Kenya. This will affect the current account balance.

The following concerns were raised on the Regulations-

1. Regulation 9 on the establishment and composition of the Advisory Board, is in favor of the National Treasury (who will have 3 seats). Further, the parties that determine the terms and conditions of the Board are closely linked to the Board. This would bring into question the transparency of the board and doubts on matters of corporate governance. It was recommended that a relevant and independent 3rd party office also be consulted or the names be submitted to Parliament for approval.
2. Regulation 18 refers to the procurement of a financial institution that to carry out functions as indicated under Regulation 19. The institution is allowed to charge 2% p.a. to cover managerial costs. This is expected to raise the borrowing costs from the fund charged to the beneficiary, from the intended 3% to 5%.
3. The Board, the secretariat and the financial institution are superfluous levels of management and possible sources of bureaucracy that will occasion additional expenditure in the management of the fund and tie down funds, which could otherwise be available to the scheme, in administration costs.
4. The requirements set under Regulation 20 for one to qualify as a CEO of the Fund are not stringent enough for an officer who will be responsible for over 1 billion of public funds and does not take full advantage of the diverse qualified personnel in

the country. There is need for a person with higher qualifications to administer the Fund.

5. Members raised concern on whether the relevant stakeholders i.e. public officers were consulted in the development of the Regulations.
6. Members also noted that there was no explanatory memorandum accompanying the Regulations as provided under Section 11 of the Statutory Instruments Act, 2013.
7. The penalty provided under Regulation 27 of imprisonment for a term of not less than five years or to a fine not exceeding 10 million shillings exceeds the limits set under Section 24(5) of the Statutory Instruments Act, 2015.

Members raised concern on the practicality of applying the provisions of the Act to the offence of misappropriation of funds or assets from the Fund. The penalty provided under the Act of a fine not exceeding twenty thousand or imprisonment for a term not exceeding six months may be too lenient.

It was agreed that the secretariat research on this matter and report back to the Committee.

Members resolved to request for the explanatory memorandum from the National Treasury.

MIN. NO. 166/2015

-DATE OF NEXT MEETING

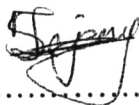
The next meeting would be held on 22nd October, 2015.

MIN. NO. 167/2015

-ADJOURNMENT

The meeting was adjourned at 9.56 a.m.

SIGNED:



.....
(CHAIRPERSON)

DATE:

5/11/2015
.....

MINUTES OF THE 26TH SITTING OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION HELD ON WEDNESDAY, 11TH NOVEMBER, 2015 AT 12.00 NOON IN THE 2ND FLOOR BOARDROOM, KICC

PRESENT

- | | |
|-----------------------|--------------------|
| 1. Sen. Stephen Sang | - Chairperson |
| 2. Sen. Judith Sijeny | - Vice-Chairperson |
| 3. Sen. Boy Juma Boy | |
| 4. Sen. Liza Chelule | |
| 5. Sen. Emma Mbura | |
| 6. Sen. Daniel Karaba | |

ABSENT WITH APOLOGY

1. Sen. Godliver Omondi
2. Sen. (Dr.) Boni Khalwale
3. Sen. Joy Gwendu

IN ATTENDANCE

1. Ms. Josephine Kusinyi
2. Ms. Carol Kirorei
3. Mr. James Machage

SENATE

- | |
|-------------------|
| - Legal Counsel |
| - Committee Clerk |
| - Budget Officer |

MIN. NO. 178/2015

- PRELIMINARIES

The Vice-Chairperson called the meeting to order at 12.12 p.m. followed by a word of prayer.

MIN. NO. 179/2015

- ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Emma Mbura and seconded by Sen. Liza Chelule.

MIN. NO. 180/2015

-CONFIRMATION OF PREVIOUS MINUTES

The minutes of the 25th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Liza Chelule and seconded by Sen. Judith Sijeny.

MIN. NO. 181/2015

**- CONSIDERATION OF THE PUBLIC FINANCE
MANAGEMENT (STATE OFFICERS AND PUBLIC
OFFICERS MOTOR CAR LOAN SCHEME FUND)
REGULATIONS, 2015**

Members were informed that the National Treasury had submitted the Explanatory Memorandum to the Public Finance Management (State Officers and Public Officers Motor Car Loan Scheme Fund) Regulations, 2015. The Explanatory memorandum contained the purpose of the Regulations, the legislative context and policy background. It further stated that extensive consultations were done during the development of the Regulations with key stakeholders and their input taken into account before finalization of the Regulations. Among the stakeholders consulted were the Public Service Commission, Salaries and Remuneration Commission, Teachers Service Commission, Judicial Service Commission, Directorate of Public Service Management and Accounting Officers of National Government.

Members raised the following concerns-

1. Some stakeholders consulted already form part of the proposed advisory board such as; the Public Service Commission, Salaries & Remuneration Commission etc. thus questioning the diversity of the consultation process.
2. Under Regulation 9, the Committee noted that the Board, the secretariat and the financial institution are superfluous levels of management and possible sources of bureaucracy that will occasion additional expenditure in the management of the Fund and tie down funds, which could otherwise be available to the scheme, in administration costs.
3. Noting similar funds under Parliamentary Service Commission, Judiciary Service Commission as well as the Central Bank scheme that are all managed by internally

set mechanisms i.e. staff and internally allocated resources; the Committee noted there would be no need for the Board, the secretariat and even financial institution if there already exists a Public Service Commission (PSC), mandated to develop human resource in the public service. Existing administrative mechanisms within the PSC i.e. trained staff, public sector data/information, is an advantage and could be used to provide a more cost effective means of administering the Fund.

4. Under Regulation 14 the Committee recommended that the list of insurance companies be as approved by the Insurance Regulatory Authority (K) and recommended to the advisory board and that the IRA will be mandated to inform the board on any changes to that list.

MIN. NO. 182/2015

-ANY OTHER BUSINESS

Procedure of processing Regulations in the Senate

Members raised concern on the procedure used in processing Regulations in the Senate after the tabling of the Committee Report; and the delays caused in dispensing Regulations. The Committee resolved that the procedure for considering Committee Reports on Regulations should be urgently reviewed.

MIN. NO. 183/2015

-DATE OF NEXT MEETING

The next meeting would be held on 12th November, 2015.

MIN. NO. 184/2015

-ADJOURNMENT

The meeting was adjourned at 1.00 p.m.

SIGNED:



.....
(CHAIRPERSON)

DATE:

18 / 11 / 2015
.....

MINUTES OF THE 28TH SITTING OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION HELD ON WEDNESDAY, 18TH NOVEMBER, 2015 AT 12.00 NOON IN THE 2ND FLOOR BOARDROOM, KICC

PRESENT

1. Sen. Judith Sijeny - Vice-Chairperson
2. Sen. Godliver Omondi
3. Sen. Boy Juma Boy
4. Sen. Liza Chelule
5. Sen. Daniel Karaba

ABSENT WITH APOLOGY

1. Sen. Stephen Sang - Chairperson
2. Sen. Emma Mbura
3. Sen. (Dr.) Boni Khalwale
4. Sen. Joy Gwendu

IN ATTENDANCE

SENATE

1. Ms. Josephine Kusinyi - Legal Counsel
2. Ms. Carol Kirorei - Committee Clerk

MIN. NO. 189/2015

- PRELIMINARIES

The Vice-Chairperson called the meeting to order at 12.05 p.m. followed by a word of prayer.

MIN. NO. 190/2015

- ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Daniel Karaba and seconded by Sen. Judith Sijeny.

MIN. NO. 191/2015

- CONFIRMATION OF PREVIOUS MINUTES

- i. The minutes of the 21st sitting were confirmed as a true record of the proceedings after being proposed by Sen. Godliver Omondi and seconded by Sen. Boy Juma Boy.
- ii. The minutes of the 26th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Daniel Karaba and seconded by Sen. Judith Sijeny.
- iii. The minutes of the 27th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Judith Sijeny and seconded by Sen. Daniel Karaba.

MIN. NO. 192/2015

**- MATTERS ARISING FROM PREVIOUS
MINUTES**

i. Under Min. No. 181/2015

It was noted that annulment of Regulation 9 of the PFM (State Officers and Public Officers Car Loan Scheme Fund, Regulations, 2015 would result in the annulment of several other Regulations where the Board appears. In light of Section 16 of the Statutory Instruments Act which requires the committee to confer with the regulation making authority before tabling its report, *the Committee resolved to communicate to the National Treasury requesting for the rationale for the establishment of the Board to enable the Committee make an informed decision.*

MIN. NO. 193/2015

**- CONSIDERATION AND ADOPTION OF THE
REPORT ON THE BASIC EDUCATION
REGULATIONS, 2015**

Members were taken through the Report on the Basic Education Regulations, 2015. The following was noted-

1. The issues raised by stakeholders on the Regulations were mainly proposed amendments to the Regulations, while the Committee does not have the mandate to amend Regulations. Further, annulment of the provisions would result in a loss of content of the Regulations.
2. Following deliberations, Members resolved to annul Regulation 30 and Regulation 84.

3. The Committee further recommended that the Ministry of Education, Science and Technology should consult further with the stakeholders in the education sector with a view to amend the provisions of the Basic Education Act No. 14 of 2013 to incorporate their proposals.

Members adopted the Report as presented with the addition of the annulments in Chapter 4-Committee Recommendations.

MIN. NO. 194/2015

-ANY OTHER BUSINESS

i. Foreign Visits

Members queried on the status of proposed foreign visits. The meeting was informed that feedback was yet to be received from the Ministry of Foreign Affairs and International Trade.

ii. Communication Authority of Kenya Regulations on Cyber crime

Members sought to know whether they were transmitted to the Senate and committed to the Committee. The meeting was informed that the Regulations had not been transmitted yet. The secretariat was tasked to track whether the Regulations were transmitted to the Clerk of the Senate.

iii. Meeting with Counties

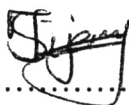
Members were reminded of the meeting with the counterpart committees of the County Assemblies of Bungoma, Kilifi, Siaya, Embu, Meru and Tharaka Nithi scheduled to be held on Thursday, November 19, 2015 at the Mini Chamber, County Hall.

MIN. NO. 195/2015

-ADJOURNMENT

The meeting was adjourned at 12.40 p.m.

SIGNED:



.....
(CHAIRPERSON)

DATE:

25/11/2015

**MINUTES OF THE 2ND SITTING OF THE SENATE SESSIONAL COMMITTEE
ON DELEGATED LEGISLATION HELD ON WEDNESDAY, 9TH MARCH, 2016
AT 11.00 A.M. IN ROOM 302, THIRD FLOOR, KICC BUILDING.**

PRESENT

- | | |
|-----------------------|--------------------|
| 1. Sen. Stephen Sang | - Chairperson |
| 2. Sen. Judith Sijeny | - Vice-Chairperson |
| 3. Sen. David Musila | |

ABSENT WITH APOLOGY

1. Sen. Stewart Madzayo
2. Sen. Emma Mbura
3. Sen. Joy Gwendu
4. Sen. Godliver Omondi
5. Sen. Hosea Onchwang'i
6. Sen. Daniel Karaba

IN ATTENDANCE

1. Ms. Josephine Kusinyi
2. Ms. Carol Kiorei
3. Mr. Humphrey Ringeera
4. Ms. Grace Wahu

SENATE

- | |
|--------------------|
| - Legal Counsel |
| - Committee Clerk |
| - Research Officer |
| - Research Officer |

MIN. NO. 10/2016 - PRELIMINARIES

The meeting was called to order at 11.15 a.m. followed by a word of prayer.

MIN. NO. 11/2016 - ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Judith Sijeny and seconded by Sen. Daniel Karaba.

MIN. NO. 12/2016

- CONFIRMATION OF PREVIOUS MINUTES

- i. The Minutes of the 1st Sitting were confirmed as a true record of the proceedings after being proposed by Sen. Judith Sijeny and seconded by Sen. David Musila.
- ii. The Minutes of the 1st Joint Sitting with the Standing Committee on Finance, Commerce and Budget were confirmed as a true record of the proceedings after being proposed by Sen. David Musila and seconded by Sen. Judith Sijeny.

MIN. NO. 13/2016

**- STUDY VISIT BY THE COMMITTEE ON
SCRUTINY OF SUBORDINATE LEGISLATION,
GAUTENG PROVINCIAL LEGISLATURE, SOUTH
AFRICA**

The meeting was informed of a request for a study visit by the Committee on Scrutiny of Subordinate Legislation of the Gauteng Provincial Legislature, South Africa. The purpose of the visit is to meet the Committee on Delegated Legislation to learn more about the scrutiny of subsidiary legislation and to share experiences.

Members resolved to host the Committee on Scrutiny of Subordinate Legislation in May, 2016. It was further resolved that four (4) counterpart committees from the County Assemblies be invited for further interactions and sharing of experiences.

MIN. NO. 14/2016

**- THE PUBLIC FINANCE MANAGEMENT (STATE
OFFICERS AND PUBLIC OFFICERS CAR LOAN
SCHEME FUND) REGULATIONS, 2015**

Members were briefed on the response from the National Treasury on the rationale of the establishment of the Advisory Board. It was noted that whereas the establishment of the Advisory Board would occasion expenditure, the National Treasury considered the following:

- i. The need to put in place a body to oversee the expenditure of the funds, considering the large sums of money to be managed by the Fund Secretariat;
- ii. To foster accountability and transparency in the management of the Funds;
- iii. To ensure representation of the stakeholders as provided for in Article 201 of the Constitution; and

iv. To ensure good governance and equity in accessing the benefits.

The National Treasury therefore noted that the benefits of establishing the Advisory Board outweigh the expenditure on the same.

Following deliberations, Members were in concurrence with the National Treasury's rationale for the establishment of the Advisory Board. *Members acceded to the Regulations and tasked the Secretariat to finalize the report for tabling in the House.*

MIN. NO. 15/2016

- THE PUBLIC FINANCE MANAGEMENT

(COUNTY GOVERNMENT) REGULATIONS, 2015

The Legal Counsel briefed Members on the Joint meeting with the Standing Committee on Finance Commerce and Budget. The following issues were raised by the County Assemblies Forum (CAF):

- i. Regulation 25: Capping of the county assemblies budgets at 7% of the total budget of the county government or double the personnel and emoluments whichever is lower.
- ii. Regulation 37: Reducing the role of county assemblies in budget making by limiting its power to amend only 1% of the Vote as contained in the County Fiscal Strategy Paper.

The Committee was in concurrence with the CAF position on the two Regulations, and noted that at a meeting with the National Treasury, it was agreed that the two provisions be amended. However, the National Treasury republished the Regulations without incorporating the proposed amendments.

It was agreed that the Chairperson liaise with the Chairperson of the Standing Committee on Finance, Commerce and Budget towards annulment of the Regulations.

MIN. NO. 16/2016

- MEETINGS WITH COUNTIES AND COUNTY VISITS

Members were presented with a schedule of all counties visited (9), meetings with counties (17) and pending counties (21). Members agreed as follows:

1. The Committee would undertake county visits to "Cluster 2" - Kiambu, Nyeri and Nyandarua Counties in April, 2016 during the recess period.
2. The Committee will host four (4) Counties for capacity building and sharing experiences in May, 2016 at a joint meeting with the Committee on Scrutiny of Subordinate Legislation, Gauteng Provincial Legislature, South Africa.

MIN. NO. 17/2016

- DATE OF NEXT MEETING

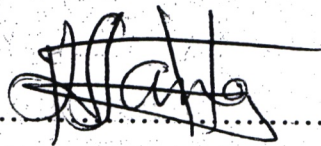
The next meeting would be held on Thursday, 17th March, 2015.

MIN. NO. 18/2016

- ADJOURNMENT

The meeting was adjourned at 11.45 a.m.

SIGNED:



(CHAIRPERSON)

DATE:

14/04/2016