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Clerk of the senate/secretary, PSC
Date: 07/03/24

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THIRTEENTH PARLIAMENT | THIRD SESSION

STANDING COMMITTEE ON ROADS, TRANSPORTATION AND HOUSING

REPORT ON THE AFFORDABLE HOUSING BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 75 OF 2023)

PAPERS LAID	
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TABLED BY	Chair Person
COMMITTEE	Roads, Transportation & Housing
CLERK AT THE TABLE	Polycarp

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NAIROBI.

MARCH, 2024

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LIST OF ABBREVIATIONS/ACRONYMS

LIST OF ACRONYMS

BETA-	Bottom-Up Economic Transformation Agenda
KNHCR-	Kenya National Human Rights Commission
KPMG -	Klynveld Peat Marwick Goerdele
PAYE .	-Pay as You Earn

LIST OF ABBREVIATIONS

AAK-	Architectural Alliance of Kenya
AFH -	Affordable Housing Bill
CDH -	Cliffe Dekker Hofmeyr
CS -	Cabinet Secretary
CSR-	Corporate Social Responsibility
DDLO-	Dagoreti District Land Owners
EAC-	East Africa Community
KAM-	Kenya Association of Manufacturers
KBA -	Kenya Bankers Association
KRA-	Kenya Revenue Authority
MDAs-	Ministries, Departments, and Agencies
MSMEs -	Micro-Small and Medium-Sized Enterprises
NCA-	The National Construction Authority
NCPC-	National Congress of Pentecostal Churches
PPP-	Public Private Partnership
SRC-	Salaries and Remuneration Commission.
VAT -	Value Added Tax

PREFACE

ESTABLISHMENT AND MANDATE OF THE COMMITTEE

The Standing Committee on Roads, Transportation and Housing is established under standing order 228(3) and the Fourth Schedule of the Senate Standing Orders and is mandated to **consider all matters relating to transport, roads, public works, housing, construction and maintenance of roads, rails and buildings, seaports and communication.**

In undertaking its mandate, the Committee oversees the following State Departments and agencies:

MINISTRY OF ROADS AND TRANSPORT

- i. State Department of Roads** which has the following institutions-
 - (a) Kenya Roads Board;
 - (b) Kenya National Highways Authority;
 - (c) Kenya Urban Roads Authority;
 - (d) Kenya Rural Roads Authority;
 - (e) Kenya Institute of Highways and Building Technology;
 - (f) Kenya Institute of Technology;
 - (g) Engineers Board of Kenya; and,
 - (h) Mechanical and Transport Fund.
- ii. State Department for Transport** which has the following institutions -
 - (a) Kenya Railways Corporation;
 - (b) Kenya Railways Training School;
 - (c) Northern Corridor Transit and Transport Coordination;
 - (d) Lamu Port South Sudan Ethiopia Transport Corridor Authority;
 - (e) Kenya Airports Authority;
 - (f) Kenya Civil Aviation Authority;
 - (g) East African School of Aviation;
 - (h) Kenya Ports Authority;
 - (i) National Transport and Safety Authority;
 - (j) The Nairobi Metropolitan Area Transport Authority; and,

(k)The Railway City Development Authority.

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

a) State Department for Housing and Urban Development which has the following institutions-

- (a) National Housing Corporation;
- (b) National Housing Development Fund;
- (c) Civil Servants Housing Scheme Fund; and,
- (d) Estate Agents Registration Board.

b) State Department for Public Works which has the following institutions-

- (a) National Construction Authority;
- (b) Kenya Building Research Centre;
- (c) The National Building Inspectorate;
- (d) Board of Registered Architects and Quantity Surveyors;
- (e) Contractors and Builders Retention Fund; and,
- (f) Building Surveyors Registration Board.

MINISTRY OF MINING, BLUE ECONOMY AND MARITIME AFFAIRS

a) State Department for Shipping and Maritime Affairs which has the following institutions-

- i. The Kenya National Shipping Line;
- ii. Kenya Maritime Authority; and,
- iii. Bandari Maritime Academy.

The Committee also works closely with the Council of Governors (CoG) and the County Assemblies Forum (CAF).

MEMBERSHIP OF THE COMMITTEE

The membership of the Committee is comprised of the following Senators-

1. Sen. Paul Karungo Thangwa, MP -**Chairperson**
2. Sen. Peris Pesi Tobiko, CBS, MP -**Vice-Chairperson**
3. Sen. (Rtd.) Justice Stewart Madzayo, EGH, MP -Member
4. Sen. (Dr.) Steve Lelegwe Ltumbesi, CBS, MP -Member
5. Sen. Enoch Kiiio Wambua, MP -Member
6. Sen. Moses Otieno Kajwang', CBS, MP -Member
7. Sen. John Kinyua Nderitu, MP -Member
8. Sen. Mohamed Said Chute, MP -Member
9. Sen. Edwine Watanya Sifuna, MP -Member

CHAIRPERSON'S FOREWORD

Mr. Speaker Sir,

The Affordable Housing Bill, 2023(National Assembly Bills No.75 of 2023) 21st February 2024 was published vide Kenya Gazette Supplement No. 236 of 4th December 2023 and passed in the National Assembly with amendments on 21st February 2024. The Bill was then referred to the Senate for consideration and read a First Time on 22nd February 2024.

Thereafter, pursuant to standing orders 145 of the Senate Standing Orders, the Bill stood committed to the Standing Committee on Roads Transportation and Housing for consideration and to facilitate Public Participation.

The Bill seeks to address the issues raised by the High Court in the above case. In particular, the main objective of this Bill is to create a legal framework for the Affordable Housing Fund to ensure access to affordable housing and fulfill the right to suitable housing as stipulated in Article 43(I)(b) of the Constitution. Additionally, it introduces the Affordable Housing Levy to fund the affordable housing programme and related social and physical infrastructure.

Mr. Speaker Sir,

In compliance with the provisions of Article 118(1) (b) of the Constitution and standing order 145(5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. An advertisement was published in the Daily Nation, the Standard and the Star newspapers on 23rd February 2024 inviting members of the public to submit written memoranda to the Committee on the Bill. Additionally, the Committee sent invitations to key stakeholders inviting them to appear before the Committee on 1st March, 2024 submit their comments on the Bill during public hearing on the Bill.

Mr. Speaker Sir,

The Committee received submissions of memoranda from the following stakeholders and has prepared the matrix containing the stakeholders' views. The Committee considered submissions from stakeholders and recommended that the Bill be adopted with the proposed amendments. Some of the key amendments proposed in the Bill are- the establishment of County Affordable Housing Committees in every county to

development and implement affordable housing programmes in the counties and coordinate and implement affordable housing policies in counties; and increase the representation of counties in the Affordable Housing Board since most of the affordable housing programmes will be implemented in county government land.

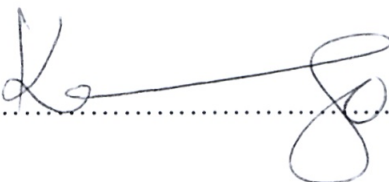
Mr. Speaker Sir,


I take this opportunity to thank the many stakeholders who submitted their memoranda to the Committee and also to those who appeared before the Committee to submit oral memoranda on the Bill. I also wish to express my gratitude to Members of the Committee for their thoughtful insights and contributions that culminated into the amendments on the Bill.

Further, the Committee thanks the Office of the Speaker and the Clerk of the Senate for the support extended to the Committee in facilitating the process that led to the production of this report.

Mr. Speaker Sir,

It is now my pleasant duty, pursuant to standing order 148(1) of the Senate Standing Orders, to present the Report of the Standing Committee on Roads, Transportation and Housing on The Affordable Housing Bill, 2023 (National Assembly Bills No. 75 of 2023)

Signed.....

Date.....

SEN. PAUL KARUNGO THANG'WA, MP

CHAIRPERSON,

STANDING COMMITTEE ON ROADS, TRANSPORTATION AND HOUSING

CHAPTER ONE: INTRODUCTION

BACKGROUND

- 1) The Affordable Housing Bill, 2023(National Assembly Bills No.75 of 2023) (Appendix 2) was published vide Kenya Gazette Supplement No. 236 of 4th December 2023 and passed in the National Assembly with amendments on 21st February 2024. The Bill was then referred to the Senate for consideration and read a First Time on 22nd February 2024.
- 2) The Bill was necessitated by the judgement of the High Court delivered on 28th November 2023 on the Constitutional Petitions by Okoiti & 6 others v Cabinet Secretary for the National Treasury and Planning & 3 others; Commissioner-General, Kenya Revenue Authority & 3 others (Interested Parties) (Petition E181, E211, E217, E219, E221, E227, E228, E232, E234, E237 & E254 of 2023 (Consolidated)) (2023) KEHC 25872 (KLR) (Constitutional and Human Rights).
- 3) In the judgement, the High Court concluded that the Affordable Housing Levy violated Articles 10,201,206 and 210 of the Constitution since it lacked a comprehensive legal framework. Further, the imposition of the Affordable Housing Levy against persons in formal employment to the exclusion of other non-formal income earners to support the national housing policy was without justification, unfair, discriminatory, irrational and arbitrary and in violation of Articles 27 and 201(b)(i) of the Constitution.
- 4) The Honourable Court again issued a temporary order of injunction on the 19th December 2023 prohibiting the conduct of participation on the Bill in the manner prescribed in the Notice published on the 9th December 2023 in the local daily newspapers, which was the invitation to submission of memorandum on the Affordable Housing Bill, 2023.The Honourable Court further directed the parties to file responses and submissions and that the matter was to be heard on 17th January 2024.
- 5) The Court Orders of 19th December 2023 did not stay the legislative process or public participation. However, what remained was public participation as prescribed in the notice of the Clerk of the National Assembly that was published in the daily newspapers of 9th December 2023.

- 6) The Bill, therefore, seeks to address the issues raised by the High Court in the above cases. In particular, the main objective of this Bill is to create a legal structure for the Affordable Housing Fund, ensuring access to affordable housing and fulfilling the right to suitable housing as stated in Article 43(I)(b) of the Constitution. Additionally, it introduces the Affordable Housing Levy to fund affordable housing and related social and physical infrastructure.

OVERVIEW OF THE BILL

- 7) The objective of the Bill is to provide a legal framework to give effect to Article 43(1)(b) of the Constitution on the right to accessible and adequate housing. The Bill establishes an Affordable Housing Levy, set at 1:5% of gross income, to be contributed by both employees and employers, with funds directed into the Affordable Housing Fund. This fund will support various initiatives, including promoting homeownership, providing low-interest loans for acquisition of affordable housing units and developing affordable housing schemes across all counties.
- 8) The Bill establishes the Affordable Housing Board, composed of nine members, whose function is to oversee the management of the fund and ensure its efficient utilisation. Allocation of funds from the Affordable Housing Fund will be distributed among entities such as the National Housing Corporation, Kenya Slum Upgrading, Low-Cost Housing and Infrastructure Fund, and the State Department for Housing and Urban Development, among others, for specific housing development and maintenance purposes.
- 9) Additionally, the Bill outlines eligibility criteria and application procedures for affordable housing units, categorising them into social housing, affordable housing, and affordable market housing typologies based on plinth area and monthly income thresholds.
- 10) Finally, the bill defines the procedures for loan applications for purchasing affordable housing units, specifying interest rates or administration fees applicable to each housing category.

PUBLIC PARTICIPATION ON THE BILL

- 11) Pursuant to the provisions of Article 118(1) (b) of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committee facilitated public participation on the Bill. The Committee through an advertisement published in the Daily Nation, The Standard and The Star Newspapers on 23rd February 2024, invited members of the public to submit written memoranda on the Bill and held a public hearing on 1st March, 2024 to receive oral submissions.
- 12) The Committee received memoranda on the Bill from the following stakeholders and prepared a matrix containing the stakeholders' views (*Appendix 2*).

CHAPTER TWO: STAKEHOLDERS SUBMISSIONS AND COMMITTEE RESOLUTIONS

A. TITLE

13) **Mr Peter Kimei** in his written submissions to the Committee proposed the amendment to the Title of the Bill from Affordable Housing Bill 2023 to National Housing Bill 2023. This will allow the Bill to cover the entire population of Kenya

The proposal was rejected and the title of the Bill retained.

14) **Ministry of Lands, Public works, Housing and Urban Development** in form of written submissions proposed change of title of the Bill to Rural and Urban Affordable Housing Bill.

The proposal was adopted on the basis that includes provisions related to implementation by county governments.

CLAUSE 1

15) **The Ministry of Lands, Public Works, Housing and Urban Development** proposed that, the Bill be amended by deleting and substituting therefor the following new clause-That, affordable housing means housing that is adequate and is priced per person or household per month to rent or to own within the means of the majority of the population or as published in the Regulations.

The justification is that the limit of 30% on the income of a person to rent or acquire is very restrictive in an Act and should be subject to Regulations or the Board approved requirement. Most jurisdictions that have implemented have shared lessons learnt and it is expected that expenditure and income data will vary every few years and would be published by KNBS. As such the % has been dropped from the Acts and left to Regulations. Locally, KMRC have also shared lessons learnt and have had to make changes to the 30% rule based on the expertise of the credit reviewing agencies.

The proposal was rejected on the basis that it was ambiguous.

CLAUSE 2

16) **The Architectural Association of Kenya** submitted that the definition of affordable housing should be expanded to include essential elements such as integrated and inclusive infrastructure and services explicitly. The justification is

that the definition of affordable housing falls short of encompassing the holistic functionality of a dwelling.

The proposal was rejected since the definition had already been provided for in the Bill.

- 17) **Cliffe Dekker Hofmeyr submitted that** the definition of Levy be amended to read as "Levy means a contribution to the fund as prescribed under Clause 4 of this Act for purposes of development of affordable housing. The proposed amendment will bring clarity to the definition of the term levy and the Affordable Housing Levy in general. Secondly, the definition will also bring in the intention of the Affordable.

The proposal was rejected since the definition had already been provided for in the Bill.

- 18) **Kenya Bankers Association, and KPMG** observed that there is no definition of gross salary or Gross Income. Gross salary should include basic salary and regular allowances but exclude variables such as leave allowance, bonus, gratuity, pension, severance pay, or any other terminal dues and benefits Gross income to be defined as the amount of money a person receives periodically from a trade or carrying out a business. This is because the Bill does not define the terms gross salary and gross income, leaving room for arbitrary interpretations. According to the Kenya Bankers Association the directives on what constitutes gross by KRA is illegal.

The proposal was rejected on the grounds that Kenya Revenue Authority has in place a system of determining gross salary and gross income

- 19) **Kenya Association of Manufacturers** proposed to include a wider range of income bands and plinth areas without the limitation of specific properties being targeted to specific income bands. They further propose an increase of the plinth area of the affordable middle class housing unit to be between 80 sqm to 150 sqm. The justification is that the various definitions of what constitutes an affordable housing unit are vague and restrictive. For instance, it is not clear how the various income bands are tied to a plinth area. Further, we observe that the plinth area of

at least 60 sqm for middle to high income housing is not adequate nor descriptive enough to guide the provision of affordable housing.

The proposal was rejected since an increase of plinth area would increase the cost of construction rendering the house unaffordable

20) **Technical University of Kenya** proposed to expand the definition of institutional housing to include student's hostels within university settings. Presently, the Bill after the 21st February, 2024 amendments only addresses housing for staff within educational institutions.

The proposal was rejected since the definition provided in the bill was sufficient

CLAUSE 3

21) **Kenya Bankers Association** expressed reservations with this Clause as it transfers the mandate of the state to provide affordable housing to its citizens by requiring them to remit monies to the government to realise their right to housing. They note that human Rights are inherent to all Kenyans, regardless of their socioeconomic status. It is the duty of the State to help realise said rights, including the right to housing, and not the mandate of the private citizens as imposed by the housing levy.

The proposal was rejected since the government raises revenue through taxation to provide for the right of the citizens and the levy is part of the tax.

CLAUSE 4

22) **KAM** proposed the contribution of the levy should be voluntary.

The proposal was rejected since the government requires the levy to finance the affordable housing programme

23) **KPMG** proposed the introduction of a maximum limit of 10, 000 for contributions to the housing levy whereas KBA and KAM propose a cap at Kes 5,000 in view of economic hardship, high cost of living and other increased taxes and levies and Mr. Muruiri proposes that the levy be reduced to 1% of basic pay and have a capping of Kshs. 2,000. The rationale for this proposal would encourage more public uptake and demonstrate some level of equity on the part of

the government especially to those who may contribute but not qualify under the Affordable Housing Scheme.

The proposal was rejected to ensure equity among the contributors.

- 24) **The Kenya Bankers Association** proposed that The Government should reconsider revising the rates for both the contributions towards the Affordable Housing Fund and the penalty rates as well. Their justification is that given the current economic crisis, the proposed rate for the Affordable Housing Levy is high. The proposed levy could potentially incentivize employee lay-offs. Furthermore, the proposed penalty rate for non-remittance of the levy is also disproportionately high considering the proposed deduction is a new one and employers (including Banks) need to allocate some of their profits towards payment of the levy, outside of their existing obligations.

The proposal was rejected and retain the deductions as provided in the Bill to ensure equity

- 25) **KBA** also proposed an exit option to make it fair for those not eligible to own a house or those who will not get houses. This is due to the heavy financial burden on Employers and Employees.

The proposal was rejected on the basis that the levy was a tax and hence mandatory deduction. However, the Committee proposed an exit option for those within voluntary contributions.

CLAUSE 4(2) (b)

- 26) **Kenya Bankers Association and Cliff Deffer Hyofmr** submitted that there was need to provide a system to determine the gains of persons who are not employed in the formal sector and the computation of the levy for non-salaried persons. This is because it is difficult to measure the income of persons who are not employed in the formal sector. This provision will allow the Government to provide housing for distinct categories of persons with different wages by providing proper systems and checks to assess the gains of persons who are not employed in the formal sector. This system and checks will reduce systemic bias against salaried individuals and ensure equity amongst Kenyans.

The proposal was accepted as an incorporation in the Regulations to be issued by the Cabinet Secretary Treasury.

- 27) **KBA** also proposed that the deductions should be made on employees' basic salary and not the gross salary which include benefits that accrue due to special consideration such as hardship allowances as well as for persons with income from other sources besides employment, the Levy shall be at the rate of 1.5% of the additional gross income of a person received or accrued.

The proposal was rejected on the basis that it would reduce the targeted collections to support the affordable housing programme.

- 28) **KPMG** proposed to amend the Bill to restrict the levy to a one-time remittance paid once upon calculating their total gross income. The justification is that given the absence of a clear definition of gross income within the draft Bill, the amendment will prevent individuals from being required to remit the levy on multiple incomes if they earn income from both businesses and a salary.

The proposal was accepted the committee and recommended it be actualized in Regulations

- 29) **Peter Kimei** submitted that the percentage tax be obligated only on employees or employers, similar to PAYE. Imposing 1.5% on employees and 1.5% on employers amounts to double taxation. The justification is that comparing this to NSSF which has similar deductions, the amount deducted on NSSF is a savings not a tax. I therefore propose a National Housing tax of 2% deducted on gross income (for employed people, deducted at source by employer similar to PAYE).

The proposal was rejected on the basis that it is the responsibility of the employer to provide housing to the employees and this is one way the government can meet the objective of Article 43 (1)(b) and the employment act.

- 30) **Clause 4** as read together with **Clause 5** and **Clause 7** of the Bill; and Section 31B and C of the Employment Act-

Kenya Bankers Association -proposed revision of rates for both the contributions towards the Affordable Housing Fund and the penalty rates as well. Rationale given was that in the current economic crisis, the proposed rate for the Affordable Housing Levy was high.and therefore could potentially lead to employee lay-off.

The proposal was rejected on the basis that the levy seeks to actualize the right of Kenyans to accessible and adequate housing as enriched in article 43(1)(b) as a result therefore the bill will eventually reduce the burdens on Kenyans by offloading the requirements to pay for housing.

CLAUSE 5

31) The Ministry of Lands, Public Works, Housing and Urban Development proposed to Substitute the term “business or company” with “person”. The justification given was that “person” is consistent with section 4 (2) (b) and person covers both incorporated and unincorporated entities which should all be treated consistently e.g. NGO’s which are not business or companies.

The proposal was adopted on the basis that the term person was more inclusive and would ensure fairness.

32) Kenya Bankers Associations submitted that the employer’s contribution should be deleted. This is because Clause 31 of the Employment Act requires employers to provide housing. The additional contribution by the employer results in a total contribution of 3% by the formal employees whereas non-salaried persons are only required to pay 1.5% which is discriminatory.

The proposal was rejected and retained as in the Bill to ensure that employers meet the obligation of providing housing to the employees as one of the methods.

CLAUSE 6

33) Kenya Bankers Association and K. Rose Wanjiru proposed that The CS Treasury should consider exempting persons who already have their own houses, non-executive directors, secondary employees, foreigners, and any other category of persons who will not be eligible for the affordable housing units. The justification is that the imposition of the levy overlooks the fact that not all Kenyans desire affordable housing units and the units are available on application. It may be assumed that the levy would finance the construction of the affordable houses but such an assumption only leads to possibility of revenue leakage.

The proposal was rejected as the levy was a mandatory tax.

34) **Kenya Association of Manufacturers** proposed that the circumstances under which the Cabinet secretary may exempt an employer from paying the Levy are made clear.

The proposal was accepted and to be provided in the Regulations

35) **Vincent Muiruri** observed that the levy is unfair since it does not make it compulsory for the business community to contribute.

The committee notes that the exemption given is meant to ensure compliance of remittance of Levy by business and companies

CLAUSE 7

36) **The Ministry of Lands, Public Works, Housing and Urban development** proposed that the Bill be amended by deleting and substituting therefor the following new clause—

Where an amount of the Levy remains unpaid after the date when it becomes due and payable by a person liable to remit the amount, a penalty equal to three per centum of the unpaid amount shall be due and payable for each month or part thereof that the amount remains unpaid and shall be summarily recovered as a civil debt from the person liable to remit the amount.

The proposal was accepted on the basis that the penalty provided for in the Tax Procedure Act is less and a severe penalty would deter default of contribution and remittance.

37) **Kenya Association of Manufacturers** proposed to delete the 3% penalty and instead have the penalty be pegged to the prevailing central bank interest rate. The justification is that the proposed penalty of 3% translates to 36% per year which is very punitive.

The proposal was rejected as it was misplaced. However, the Committee proposed a 3 % penalty on default per month to discourage delay of remittances to the fund.

38) **Kenya Bankers Association** submitted that all contributors should declare whether there have been any changes to their status on iTax i.e., unemployment to prevent accrual of fines and penalties. KBA further submitted that the Bill should also have dispute resolution mechanisms for such matters. The justification is that

self-declaration will enable the collector to keep updated records on the status of the taxpayers and not impose penalties for the period where the taxpayer did not earn any income.

The proposal was accepted subject to the provision being made in the Regulations

CLAUSE 8

39) **The Kenya Association of Manufacturers** proposed that the fund be managed by the Board or a Housing Authority.

The committee observed that the proposal was provided for in the bill.

CLAUSE 9

40) **KPMG, Rose Wanjiru** proposed that the Clause and the Bill be amended to enable the entity to leverage debt instruments such as concessional loans, infrastructure bonds. Rationale provided is that the Bill in its current structure does not lend itself to scalability through leverage. According to KPMG the Housing and Development Board Structure (HDB) in Singapore which recently issued a green bond worth US\$1.1bn. The bonds proceeds are to be channelled into “eligible” projects. HDB has a credit rating and is active in the capital markets.

The proposal was rejected but the committee noted that voluntary contributions and income from the investments made by the fund are sufficient to supplement the levy collection.

CLAUSE 9(d)

41) **KPMG, The Architects Alliance (‘TAA’)** proposed to amend Clause 9 (d) to accurately refer to the appropriate Clause on voluntary contributions. The justification is that Clause 9 (d) states that voluntary contributions made under Clause 38 shall be paid into the Housing Fund. Clause 38 of the Bill does not refer to voluntary contributions. The relevant Clause would be Clause 42.

The committee adopted the proposal noting that it was cross referencing error

CLAUSE 9

42) The Ministry of Lands, Public Works, Housing and Urban Development proposes to add subclause (g) to allow for borrowings to be approved by the Cabinet Secretary and the Cabinet Secretary responsible for National Treasury.

The proposal was accepted

CLAUSE 10

43) **Kenya Association of Manufacturers** proposed to amend the subclause to read as follows at Clause 10 (1)- The purpose of the Fund shall be to provide funds for the design, development and maintenance of affordable housing and associated social and physical infrastructure. The justification is that it is important to indicate the full life cycle of the affordable housing ecosystem.

The proposal was accepted and the function of design of housing unit and maintenance of the units and associated infrastructure to be provided for in the Regulations

44) **KPMG** proposed that Clause 10 should set out the purpose of the fund and commit to its revolving nature and recommended that the Clause should be redrafted to read as follows- “The Fund is established with the explicit commitment to its revolving nature, ensuring sustainable utilisation and replenishment of resources for ongoing initiatives.” The justification was that Clause 10 does not explicitly state the revolving nature of the fund and the intention to use the fund as a guarantee. Amend Clause 10 to read Revolving the fund forces transparency through the process as the accounts will reflect the performance of the different allocations.

The committee observed that proposal was already provided for in Clause 43 (1).

45) **Kenya Bankers Association** proposed to repeal the provision proposing to provide low-interest loans for the acquisition of affordable housing units within the approved affordable housing schemes. The justification is that this is a tax contributory fund and Government funds cannot give contributors loans at low interest rates.

The proposal was rejected on the basis that the hustler fund which is derived from taxation provides loans to contributors of the same tax.

- 46) **KPMG** proposed an amendment to Clause 10 (2) (c) to include the word “in all counties.” The rationale provided is that Clause 10(c) states that the Housing fund shall provide for the setup of affordable housing schemes, without mandating their presence in all counties, as previously worded in the Bill tabled before the National Assembly. The omission of the words "in all counties" could potentially introduce bias. Distributing housing development more evenly across all counties will ensure a more balanced economic outlook across the country.

The proposal was accepted

CLAUSE 10

- 47) **The Ministry of Lands, Public Works, Housing and Urban Development** proposes amendment in Clause 10(2) (1) and (h) to provide services to the assets of the Fund. The justification was the need to be intentional that the Fund will be able to appoint service providers example, estate agents to collect service charge as service providers amongst others.

The proposal was accepted

CLAUSE 11

- 48) **KPMG** proposed that this Clause should capture what happens to funds once allocated, i.e., how they are revolved to complete the flow of funds. It should encompass the mechanisms for the allocation and subsequent revolving of funds to ensure a continuous flow of resources. Additionally, it should stipulate that utilising the fund as a guarantee necessitates significant interventions, such as seeking a credit rating or undergoing a ratings process.

The proposal was accepted and will be provided for in the Regulations

- 49) **Kenya Bankers Association** proposed that the Bill allocates 2% of the monies to the Collector yet the purpose for this application has not been stated. Rationale for the allocation is that of the 2% to the Collector should be provided as the Collector has already been receiving the levy from the formal sector.

The proposal was accepted with an amendment of Clause 11 (4) (a) to provide upto 0.5% to the collector for collection of the levy.

CLAUSE 12(3)

50) **The Ministry of Lands, Public Works, Housing and Urban Development- proposes** that Upon approval of the affordable housing investment programme by the Cabinet, the Cabinet Secretary shall submit the approved affordable housing investment programme to the National Assembly.

The committee proposed to replace the word National Assembly with Parliament

CLAUSE 13

51) **Vincent Muruiru** proposed that 70% of affordable houses be available to consistent contributors. This will attract the business community to contribute.

The proposal was rejected on the basis that every citizen is a consistent contributor given that it is a mandatory levy however the committee noted that the programme elicits interest and therefore it is important to safeguard ongoing projects.

52) **Kenya Bankers Association-** Proposed that the Clause should clearly state that the Board shall have oversight and enforcement powers over the development of affordable housing. The justification is that the inclusion of enforcement powers will give the Board the gravitas to oversee the development of the affordable housing units and avoid any misappropriation of funds.

The proposal was adopted and additionally propose the inclusion of National Construction Authority and the State Department of Public works as one of implementing agencies in the Third Schedule.

CLAUSE 14

53) **Kenya Bankers Association** proposed that the ex-officio members should be clearly identified and defined to ensure that there is no abuse of power and misappropriation of allowances. The justification provided is that provisions mentioned that there will be ex-officio members of the Board. It is important that these members are identified and defined. In addition, it is not clear whether ex-officio members will be entitled to allowances.

The committee has prescribed that the Chief Executive Officer is the ex-officio in the amendments.

54) **Kenya Bankers Association** proposed that there should be representation from each of the agencies receiving funds such as the National Housing Corporation, projects under the Kenya Slum Upgrading and Low-Cost Housing and the State Department of Housing and Urban Development to ensure free flow and access to information. Rationale Representation of the various agencies will ensure free flow and access to information amongst the agencies. The Board will also leverage on similar projects to achieve economies of scale.

The proposal was rejected as one of the members of the board is the Principal Secretary responsible of matters affordable housing and is also in charge of the proposed agencies

CLAUSE 15

55) **Kenya Bankers Association** proposed that taking into consideration the fixed contracts, the appointment of Board members should be staggered for succession planning purposes. The justification is that it is stated that there will be a 5-year affordable housing investment programme hence there should be proper succession planning procedures in place to ensure business continuity.

The Committee observed that the staggering of appointment of board members is already provided for in the Bill proposal. Further, the Committee proposed an amendment to Clause 23 (1) to provide the tenure of office for the CEO to be 3 years and renewable once.

56) **Kenya Associations of Manufacturers** proposed –

(a) to insert a new paragraph (j) that allows the Board to enter into Public Private Partnerships.

(b) to insert a new paragraph (k) that gives powers to the Board to make dwellings available for the purpose of sale to eligible applicants under affordable dwelling purchase arrangements and may, in accordance with the Housing Acts and Regulations made under any of those Acts, acquire, build or cause to be built, or otherwise provide or facilitate the provision of, dwellings for that purpose.

The proposal for the Board to enter into PPP – The committee observed that the this was already provided for in the Bill

57) **Kenya Associations of Manufacturers**- Proposed to amend as follows:

- a) three persons, not being public officers, appointed by the Cabinet Secretary of whom
- b) one shall be a nominee of the Kenya Association of Manufacturers;
- c) one shall be a nominee of The Architects Alliance; and
- d) one shall be a nominee of the Law Society of Kenya.

The proposal was rejected

58) **Cliffe Dekker Hofmeyr** proposed to insert the following new Clause (15)(2)(1)(k)-Without prejudice to the generality of subclause (1), the Board shall;
k) collect data in collaboration with the determined stakeholders, in relation to means testing and develop a means testing instrument. The justification is that the purpose of this introduction is to enhance the functions of the board, to give life to the proposed introduction of Clause 4 (3) that seeks to empower the Board and KRA to collect data to determine the income of unemployed persons.

The proposal was accepted by the committee with the determination of means testing and development of means testing instruments to be done by KRA

59) **The Architects Alliance ('TAA')** proposed to add that the Board shall offer guidance on matters relating to design, development and maintenance of affordable housing and the associated physical infrastructure.

The proposal was accepted but to amend Clause 10 on the purpose of the fund to include design and maintenance of the housing units.

60) **Kenya Association of Manufacturers** proposed that the Chairperson: (i) has qualifications in the built environment. (ii) be appointed from amongst the board members who have been nominated by the professional bodies; and (iii) be independent. This will ensure that the Board is independent and makes decisions based on the objects of the Act.

The proposal was rejected since the position of the chairperson was non-executive, the qualifications should be measured in respect of years of experience in senior management position.

61) **Oraro & Company Advocates and Architectural Alliance of Kenya** proposed the addition of a prescribed period of experience in the relevant fields (housing, banking, finance or law) before a person can be appointed as a chairperson or a member of the Board. This is because requiring a minimum level of experience in a certain field ensures that individuals appointed to positions possess the relevant skills, knowledge and expertise to perform their duties effectively. Secondly, the minimum years of experience for the chief executive officer and corporation secretary have been included in Clauses 23(2)(b) and 28(2)(c) respectively.

The Proposal was accepted and amended to have the position of the chair require a senior management position for at least 10 years in either public or private sector.

CLAUSE 17

62) **Kenya Associations of Manufacturers** proposed to delete the word “dishonesty” appearing in paragraph C. This is because the word ‘dishonesty’ is open to multiple interpretations. It may be abused to remove persons from the Board for other reasons other than, or not connected to corruption.

The proposal was rejected on the grounds that it appears in the Leadership and Integrity Act.

CLAUSE 21

63) **Oraro & Company Advocates** proposed the inclusion of an offence when a member fails to disclose his/her conflict of interest to the Board. The rationale is that it acts as a deterrence to ensure that a member complies with the provisions of this Clause by disclosing a conflict of interest to the other members of the Board.

The proposal was rejected on the basis that it is not provided for in any statute.

CLAUSE 23(1)

64) **Kenya Association of Manufacturers** proposed to add a new subclause that reads as follows- The Chief Executive Officer shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.

The proposal was accepted.

CLAUSE 23(2)

65) **Oraro & Company Advocates** proposed that in addition to the qualifications provided, a person should meet the requirements of Chapter Six of the Constitution as a requirement for appointment as a chief executive officer of the Board. The justification is that leadership and integrity principles ensure that the person possesses a strong commitment to ethical conduct. Secondly, this requirement has been included in Clause 16(2)(a) of the Bill as a qualification requirement for appointment as a member of the Board.

The proposal was accepted and noted that this had been provided for in the Bill

CLAUSE 25

66) **KNHCR**- Proposes that this Clause violates data subjects' rights to privacy as provided for under Article 31 of the Constitution of Kenya. It also violates provisions under the Data Protection Act.

The proposal was rejected on the ground that data in reference is data related to the programme and projects under the bill and hence does not violate the Data Protection Act.

CLAUSE 29(1)

67) **Oraro & Company Advocates** proposed that the remuneration of the staff is determined by the Board in consultation with the Salaries and Remuneration Commission. This proposal will be in line with Article 230(4) (a) of the Constitution which gives the Salaries and Remuneration Commission power to set and review the remuneration and benefits of all public officers.

The proposal was rejected on the ground that it was not necessary for SRC to be consulted in the determination of remuneration of non-state officers.

CLAUSE 30

68) **K. Rose Wanjiku, Advocate of the High Court** proposed to amend Clause 30 to read: "a person qualifies to be allocated an affordable housing unit if that person is at least eighteen years of age and has submitted an application to the relevant agency in the manner specified. The justification is that the provision

discriminates against foreigners who are in the country either by reason of work or forced migration and yet are required to comply with the provisions of the Act. The provision also contravenes Article 10(2) and 27 of the Constitution on non-discrimination.

The proposal is misplaced and should refer to Clause 40. The proposal was accepted but to be provided in the Regulations

CLAUSE 32

69) **KAM, Rose Wanjiku, Advocate of the High Court** proposed to amend Clause 32 of the Bill and include aspects of sanitation for the Bill to give Article 43(1) (b) full effect. (b) delete Clause 32 of the Bill and replace it with a new Clause 32 which would read- An agency may take- off affordable housing units under an affordable housing scheme if the affordable housing scheme –

- (a) is supported by a report on housing needs;
- (b) is supported by a full environmental impact assessment study;
- (c) has been approved by the agency;
- (d) meets policy and statutory requirements on housing and sanitation standards;
- (e) and e. meets any other criteria or conditions set by the agency.

The committee observed that the proposal was wrongly cross referenced and should refer to Clause 40. The proposal was accepted subject to it being provided for in the Regulations.

CLAUSES 33, 34, 35 AND 36

70) **Oraro & Company Advocates** proposed the addition of the word “administrator of the” immediately before the word “Fund”. Rationale a) Firstly, the Fund is not an entity established in the Bill to administer the Fund) Secondly, the chief executive officer is the entity established in the Bill to be the administrator of the fund as indicated in Clauses 2 and 24 of the Bill.

The proposal was accepted was accepted with amendments and in its place to read “board of the fund”

CLAUSE 38-

71) **Oraro & Company Advocates** submitted that the Contributions from taxpayers and their employers, where applicable, should be considered as deposit and the funds should be utilized for purposes of allocation of a housing unit. The rationale was that the sole purpose for deduction of the levy is to enable development of affordable housing. In that case, persons should be allowed to assess how much contributions have been made towards affordable housing and use the funds as deposit or for allocation of houses. Inability to use their contributions will be deemed to be unfair, discriminatory, and unconscionable.

The proposal was rejected on the ground that contributions are a levy and not a savings.

72) **KPMG** proposed to restrict beneficiaries to a single house for their lifetime and include an eligibility criterion that prioritizes: (i) low-income individuals and families; and (ii) first-time homebuyers. The justification is that if not done there is a likelihood of increasing the risk of individuals with higher incomes, who could potentially acquire multiple affordable homes exacerbating the social inequities that already existing in the country. These restrictions could help ensure that affordable housing is distributed more equitably among those who genuinely require an affordable unit.

The proposal was accepted and that the beneficiaries should be individual persons and not body cooperates.

73) **Cliffe Dekker Hofmeyr** proposed to amend the Bill so that the Clause reads that 'A natural person shall be eligible to be allocated only one affordable housing unit if that person is a Kenyan citizen who is at least eighteen years of age and holds a valid Kenyan Identity Card'. The proposed amendment seeks to limit the number of units to be purchased by one natural person. This will alleviate the risk of people using body corporates to purchase more than one unit and end up cheating the program.

The proposal was accepted and the Committee resolved to amend Clause 38 to clarify that the reference to "person" means natural person. That an applicant is only eligible to receive one house and the Cabinet Secretary to provide further eligibility criteria.

74) **The Ministry of Lands, Public Works, Housing and Urban Development** proposed that a person or body corporate shall be eligible to be allocated an affordable housing unit subject to the requirements of section 31 given that The Eligibility Criteria has been moved to Regulations so this is misplaced and should be deleted.

The committee accepted to move part of the eligibility criteria to Regulations.

CLAUSE 38 & 39

75) **KPMG, Kenya Manufacturers Authority, Cliffe Dekker Hofmeyr and The Architects Alliance ('TAA')** proposed that Clause 38 and 39 make reference to Clauses that are no longer related to the eligibility criteria.

The committee agrees with this observation and the reference to Clause 30 and 31 is corrected in amendments.

CLAUSE 39

76) **Vincent Muiruri** proposed that the Levy to form the part deposit required during allocation of houses.

The proposal was rejected on the basis that the contributions are a tax and not a saving.

77) **The Ministry of Lands, Public Works, Housing and Urban Development informs that** Clause 30 referenced is misplaced given that was a Cross referencing issue and there is no allocation criteria in the Bill as it was moved to Regulations.

The committee noted the cross-referencing error and adopted it.

CLAUSE 40(b)

78) **Oraro & Company Advocates** proposed that the policy and statutory requirements are listed in this Clause. This rationale is that it enhances clarity by listing the policy and statutory requirements that have been omitted from this Clause.

The proposal was accepted and to be provided for in Regulations.

CLAUSE 41

79) **Vincent Muiruri** proposed to define interest on loans to 3% and only available to contributors. The rationale is that it will encourage making of the contribution.

The proposal to be provided in the regulations.

CLAUSE 44

80) **Cliffe Dekker Hofmeyr** proposed to amend Clause 44 (2) to read- A person who contravenes the provisions of subclause (1) shall be liable, on conviction- (a) to a fine not exceeding twenty million shillings or imprisonment of a term not exceeding ten years, or to both. The justification is that a heavy sanction will deter perpetrators from committing the offences.

The committee recommends amendments to provide a fine of twenty million shillings and an imprisonment term of ten years and or both.

CLAUSE 47

81) **Cliffe Dekker Hofmeyr** propose deletion of Clause 47 (2)(b) which in essence requires a deposit for the housing before a house is acquired as provided for in Clause 39(2)(a)

The proposal was accepted on the basis that it supports the ease of acquiring a house.

CLAUSE 49(1)

82) **Oraro & Company Advocates**- proposes the addition of the word “before” appearing after the word “immediately”. This proposal seeks to correct the omission present in this sub-Clause.

The committee observed that the intent of the was to correct the typographical error. The proposal was adopted.

INTERPRETATION

83) **Cliffe Dekker Hofmeyr** proposed the introduction of the following words-

(a) means testing; means a method that uses the Means Testing Instrument to determine the mode of calculation of the gross income of a person.

(b)means testing instrument" means a set of indicators that capture various economic aspects of an individual for purposes of conducting means testing. The rationale behind this proposal was to give clarity to the meaning of the words being introduced.

The proposal was rejected on the basis that there was no reference in the Bill.

NEW CLAUSE

84) **Vincent Muiruri** proposed that the levy be introduced as part VAT which will cover most Kenyans.

The proposal was rejected on the basis that it will complicate its collection.

85) **KPMG-Inclusion of incentives** proposed that the Bill should include tax incentives to encourage corporations to provide a gift or donation under Clause 9 of the Bill. The justification is that by offering reduced tax liabilities or credits, governments can stimulate greater participation and support for housing initiatives.

The proposal was rejected on the basis that it will negate the purpose of the bill.

86) **KPMG-** also proposed that the Bill introduces property tax relief for individuals who are contributing to the levy. This can be achieved by providing subsidies for payments on land rates and land rent to homeowners who are already burdened with paying mortgages and property taxes, in addition to the housing levy. The justification is that many homeowners face significant financial burdens, including mortgage payments, property taxes, and now the housing levy. Introducing property tax relief helps alleviate this burden, especially for those struggling to make ends meet.

The proposal was rejected on the ground that it will negate the purpose of the bill.

87) **Peter Kimei** submitted that being a national housing Bill, he urged the Senate to consider including an amendment for the fund to-
Support every Kenyan who starts to build their own houses for own use (not for commercial use) by:

- a. Paying for the plans of the house
- b. Paying all relevant fees for approval of the house plans
- c. Paying for inspections fee and cite supervision by accredited engineers

- d. Subsidize labor – government to pay 50% of casual labor costs at the sites
- e. Subsidize construction materials especially cement, iron sheets, nails and blocks.
- f. Subsidize mortgage repayments to Kenyans with a mortgage with fixed monthly relief of Ksh. 5,000 on all mortgages
- g. Control interest charged on new mortgages by commercial banks.

The committee accepted the intent of the proposal and recommended that it be provided for in Regulations under the rural affordable housing using voluntary contributions as collateral or deposits.

88)The following stakeholders submitted views in support of the bill-Jua Kali Contractors National Umbrella Organizations, Mjengo Construction Workers Welfare Association, Jeremiah Nyagah Technical Institute, Mbeere North Technical and Vocational College, The Dagoretti District Landowners Welfare Association, The Mutarakwa Harmony Cooperative, The Kenya National Congress of Pentecostal Churches (KNCPC), The Matatus Stage Welfare Association

89)The following stakeholders submitted views opposing the Bill- Pamoja Tutetee Haki Organization Mwingi Bodaboda Operators Association.

CHAPTER THREE: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

4.1 COMMITTEE OBSERVATIONS

- a) That the Affordable Housing Bill, 2023 (National Assembly Bills No. 75 of 2023) was a levy Bill that sought to create jobs, enhance economic vibrancy in the country as well as offer decent and affordable housing to Kenyans;
- b) Part V Clause 41 (4) does not clarify how a person making voluntary savings with the fund for purposes of raising deposits towards the allocation of a housing unit will know their lack of eligibility for purposes of deposits withdrawal;
- c) That the Bill did not have a provision for Affordable House developments to persons who would wish to have the houses constructed on their own land and not on government land;
- d) Clause 11 (1) (b) was not clear whether persons housed in institutional housing units have the right to acquire and permanently occupy structures build for public officers' occupancy;
- e) Cultural issues in housing needs were not addressed in the design of housing units;
- f) Most of the affordable houses did not meet the needs of the targeted groups in terms of family size and cultural dynamics;
- g) That the levy contributions were to boost the inadequate national budgetary allocation towards development of affordable housing units with the expected collections from the Housing Levy being Ksh. 6.5 billion per month;
- h) There was no provision on how the Housing Levy Fund will finance the three typologies of housing units as provided in Clause 2(2) (a) to (c);
- i) The Bill did not incorporate cultural preferences and the lifestyles of different ethnicities in the implementation of the affordable housing programme in counties.

4.2 COMMITTEE RECOMMENDATIONS

Having considered the Bill and submissions from stakeholders, the Committee recommends that the Senate approves the attached amendments (Appendix...). Some of the key amendments include-

a) The short title of the Bill be amended to read ‘the Rural and Urban Affordable Housing Bill, 2023’.

b) The definition of the term affordable housing unit in Clause 2 be amended to remove the definitions of the size by plinth area and the monthly income to be charged.

The Committee was of the opinion that the definition as provided for in the Bill was too prescriptive and was best provided for in the Regulations;

c) Clause 12(3) and Clause 13 (3) to be amended by deleting the word ‘National Assembly’ and replacing it thereafter with the word “Parliament”;

The Committee noted that the Senate should be included in the oversight of the Affordable Housing programme so as to protect the interest of County Governments since most of the Affordable Housing Projects would be implemented on County Government Land.

d) Amend Clause 42 (4) to provide options to access affordable mortgage scheme to finance development of an affordable housing unit on private land;

This amendment provides for the option of taking a mortgage for persons who make voluntary contributions to acquire affordable housing units but who are not allocated the units and can opt to construct affordable units on land that they own.

e) Amend Clause 14(3) d (i) to increase the number of nominees of the Council of County Governors.

The Committee resolved to increase representation of counties in the Board arising from the fact that the majority of the affordable housing programs will be implemented on county government land.

- f) Insert a new Clause to provide for County Affordable Housing Committees in all the counties and provide for the functions of the Committees and its linkage with the Affordable Housing Board.

The amendment is meant to cater for unique housing needs while preserving cultural needs and identity of the lifestyles of the diverse communities in counties.

LIST OF APPENDICES

Appendix 1	Minutes of the Committee meetings that deliberated on the Bill (6 sets)
Appendix 2	Matrix on stakeholders' submissions on the Bill
Appendix 3	Newspaper advertisement calling for submission of memoranda on the Bill.
Appendix 4	Committee Stage amendments to the Bill
Appendix 5	The Affordable Housing Bill, 2023(National Assembly Bills No.75 of 2023)
Appendix 6	List of adoption for The Affordable Housing Bill, 2023(National Assembly Bills No.75 of 2023)

APPENDIX 1



**MINUTES OF THE SIXTY FIRST SITTING OF THE STANDING COMMITTEE
ON ROADS, TRANSPORTATION AND HOUSING HELD ON FRIDAY, 1ST
MARCH, 2024 AT 9.00 A.M. AT THE AMPHITHEATRE, KICC BUILDING.**

PRESENT

- | | |
|----------------------------------|---------------------|
| 1. Sen. Paul Karungo Thangwa, MP | - Chairperson |
| 2. Sen. Peris Tobiko, CBS, MP | - Vice –Chairperson |
| 3. Sen. Enoch Kiio Wambua, MP | - Member |
| 4. Sen. Edwin Watanya Sifuna, MP | - Member |
| 5. Sen. Mohamed Said Chute , MP | - Member |

APOLOGIES

- | | |
|---|----------|
| 1. Sen. (Rtd)Justice Stewart Madzayo, CBS, MP | - Member |
| 2. Sen. John Kinyua Nderitu, MP | - Member |
| 3. Sen. (Dr.) I.clegwe Ltumbesi, CBS, MP | - Member |
| 4. Sen. Moses Kajwang', CBS, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|------------------------------|
| 1. Mr. Charles Ngatia | - Clerk Assistant I |
| 2. Ms. Peris Mukuria | - Clerk Assistant III |
| 3. Mr. Malcom Lee Ngugi | -Legal Counsel |
| 4. Ms. Lorna Okatch | - Research Officer II |
| 5. Ms. Janice Naserian | - Research Officer III |
| 6. Mr. Ian Otieno | - Audio Officer |
| 7. Mr. John I.ckampule | - Assistant Sergeant-At-Arms |
| 8. Mr. Caleb Njogu | - Intern |

MIN/SEN/RTH/359/2024

PRELIMINARIES

The meeting was called to order at nine O'clock and commenced with a word of prayer by Sen. Paul Karungo Thangwa, MP.

MIN/SEN/RTH/360/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Mohamed Said Chute, MP and seconded by Sen. Enoch Kiio Wambua, MP as follows –

1. Prayer;

2. Adoption of the Agenda;
3. Presentation of Brief on the Affordable Housing Bill ,2023 (National Assembly Bills No.75 of 2023);
4. Any Other Business; and
5. Adjournment and Date of the Next Meeting.

MIN/SEN/RTH/361/2024

PRESENTATION OF BRIEF ON THE
AFFORDABLE HOUSING BILL, 2023
(NATIONAL ASSEMBLY BILLS NO. 75 OF 2023)

The Committee considered the brief on the Affordable Housing Bill, 2023 (National Assembly Bills No. 75 of 2023) and made the following observations-

1. That the Bill is discriminatory as majority of Kenyans who will pay the housing levy will not get to be allocated houses for ownership;
2. That Part V Section 41 (4) does not clarify how a person making voluntary savings with the fund for purposes of raising deposits towards the allocation of a housing unit will know their lack of eligibility for purposes of deposits withdrawal; and
3. That the Bill did not have a provision for Affordable House developments to persons who would wish to have the houses constructed on their own land and not on government land.

The Committee resolved as follows-

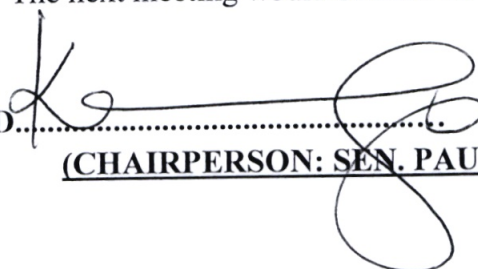
1. That a clear definition of institutional housing under Section 11 (1) (b) should be provided, detailing the source of funds for the developments and whether persons housed in such facilities have the right to acquire and permanently occupy structures build for public officers' occupancy;
2. That the Bill did not clearly define what a social house is and that the Cabinet Secretary Ministry of Lands, Public Works, Housing & Urban Development should give a clear definition in her oral submission to the Committee;
3. That the interest charged on the houses should be determined by the typology of the housing units; and
4. That Part III Section 12 (3) should be amended by replacing the word "*National Assembly*" with "*Parliament*".

MIN/SEN/RTH/362/2024

ADJOURNMENT AND DATE OF THE NEXT
MEETING

There being no other business, the meeting was adjourned at Twenty minutes past Ten O'clock. The next meeting would be held on notice.

SIGNED.....



(CHAIRPERSON: SEN. PAUL KARUNGO THANGWA, MP)

DATE.....

7th March 2024
K. S. 80



MINUTES OF THE SIXTY SECOND SITTING OF THE STANDING COMMITTEE ON ROADS, TRANSPORTATION AND HOUSING HELD ON FRIDAY, 1ST MARCH, 2024 AT 10.30 A.M. AT THE AMPHITHEATRE, KICC BUILDING.

PRESENT

- | | |
|----------------------------------|--------------------|
| 1. Sen. Paul Karungo Thangwa, MP | - Chairperson |
| 2. Sen. Peris Tobiko, CBS, MP | -Vice –Chairperson |
| 3. Sen. Enoch Kiio Wambua, MP | - Member |
| 4. Sen. Edwin Watanya Sifuna, MP | - Member |
| 5. Sen. Mohamed Said Chute , MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. John Nderitu, MP | - Member |
| 2. Sen. (Rtd) Justice Stewart Madzayo, CBS, MP | - Member |
| 3. Sen. (Dr.) L.legwe Ltumbesi, CBS, MP | - Member |
| 4. Sen. Moses Kajwang', CBS, MP | - Member |

IN ATTENDANCE

ARCHITECTS ASSOCIATION OF KENYA & ARCHITECTS ALLIANCE

- | | |
|-------------------------------|--------------------------|
| 1. Sen. (Arch) Sylvia Kasanga | -The Architects Alliance |
| 2. Arch. G. A. Ndege | -AAK Vice President |

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

- | | |
|------------------------|------------------------|
| 1 Hon Alice M Wahome | - CS Ministry of Lands |
| 2 Mr. Charles Hinga | - PS Housing |
| 3 Eng. B. K Njenga | - Secretary Urban |
| 4 Mr. John Muya | - Secretary Admin |
| 5 Mr. Ismail Chemjong | - Adviser to the CS |
| 6 Mr. Eric | - Technical PA to CS |
| 7 Arch Duncan Imbamba | - D/D CSHD |
| 8 Eng. Byron Buyu | - Ag. Secretary IPDU |
| 9 Ms. Eunice Gathoni | - Deputy Director |
| 10 Ms. Stella Muthungu | - SD HUD-TALKS |

SECRETARIAT

- | | |
|-------------------------|------------------------------|
| 1. Mr. Charles Ngatia | - Clerk Assistant I |
| 2. Ms. Peris Mukuria | - Clerk Assistant III |
| 3. Mr. Malcom Lee Ngugi | - Legal Counsel I |
| 4. Ms. Lorna Okatch | - Research Officer II |
| 5. Ms. Janice Naserian | - Research Officer III |
| 6. Mr. Ian Otieno | - Audio Officer |
| 7. Mr. John Lekampule | - Assistant Sergeant-At-Arms |
| 8. Mr. Caleb Njogu | - Intern |

MIN/SEN/RTH/363/2024

PRELIMINARIES

The meeting was called to order at thirty minutes past Ten O'clock and commenced with a word of prayer by Sen. Paul Karungo Thangwa, MP.

MIN/SEN/RTH/364/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Mohamed Said Chute, MP and seconded by Sen. Enoch Kiio Wambua, MP as follows –

1. Prayer;
2. Adoption of the Agenda;
3. Public hearing on the Affordable Housing Bill, 2023 (National Assembly Bills No. 75 of 2023);
4. Any Other Business; and
5. Adjournment and Date of the Next Meeting.

MIN/SEN/RTH/365/2024

PUBLIC HEARING ON THE AFFORDABLE HOUSING BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 75 OF 2023)

ARCHITECTS ASSOCIATION OF KENYA AND ARCHITECTS ALLIANCE

The Architects Association of Kenya informed the Committee as follows-

1. That the definition of affordable housing falls short of encompassing the holistic functionality of a dwelling. This definition should be expanded to include essential elements such as integrated and inclusive infrastructure and services. Affordable housing should not only be financially accessible but also include the necessary infrastructure and services to ensure its functionality and good living conditions;
2. That the social housing programme should incorporate infrastructure such as roads, walking spaces for pedestrians, green spaces and outdoor spaces for recreation;
3. That funds should be allocated to projects and not to organizations, the reason being that if funds are allocated to organizations, then there was the tendency to undertake projects without meeting the needs of the citizenry;

4. That the process of public participation should not end with the Bill process but should be continuous to ensure that all projects represent the needs of the targeted occupants;
5. That the representation in the Board should include a person with background in Architecture so as to recognize the distinctive roles of professionals within the construction field and specialized expertise required for successful implementation of affordable housing projects;
6. The definition of affordable housing unit in Clause 2 stating the typology of housing units should not be provided for in the Bill but rather in the Regulations; and
7. The Bill should provide for Affordable Housing Committees at county levels to guide and advise on designs and needs suitable for people in the different counties and soils types for the areas.

The Committee noted the submissions of the Architects Association of Kenya and made the following observations and resolutions-

1. The purpose of the Bill was not clear as to whether the Bill sought to provide housing, create employment or raise revenue for the housing programme;
2. Cultural issues in housing needs were not addressed in the design of housing units;
3. Most of the affordable houses did not meet the needs of the targeted groups in terms of family size and cultural dynamics; and
4. The structural designs of the housing units did not provide for adequate lighting and ventilation. The Pangani Affordable Housing units for instance lacked natural lighting and had limited ventilation and the size of rooms were small.

CABINET SECRETARY MINISTRY OF LANDS, PUBLIC WORKS, HOUSING & URBAN DEVELOPMENT

The Cabinet Secretary Ministry of Lands, Public Works, Housing & Urban Development informed the Committee as follows-

1. That the Affordable Housing Bill, 2023 (National Assembly Bills No.75 of 2023 was a levy Bill that sought to create jobs, enhance economic vibrancy in the country as well as offer decent and affordable housing to Kenyans;
2. That the levy contributions were to boost the inadequate national budget allocation towards affordable housing with the expected collections from housing levy being Ksh. 6.5 billion per month;
3. That housing levy contribution through tax was not a guarantee of being allocated a housing unit for ownership;
4. That the Bill provided for three typologies of housing units –
 - a) Social housing - plinth area of at least 1/8th square meters with targeted persons of a monthly income of below Ksh.20,000;
 - b) Affordable houses - plinth area of at least 30 square meters with targeted persons of monthly income of between Ksh.20,000 and Ksh.149,000; and

- c) Market houses- plinth area of at least 80 square meters with targeted persons for middle to high income earners of monthly income of above one Ksh. 149,000.
5. That the affordable housing developments will support other infrastructure and social amenities like health centers, social halls, markets, roads, walkways, sewer lines, water and street lighting among others;
6. The levy will provide guarantees of payments to investors for off taking the projects;
7. Affordable housing projects will be carried out in all counties to ensure there is equity for all;
8. The State Department for Housing was developing a Public Private Partnership framework to provide for counties to implement their own affordable housing projects. This would not however exempt the residents of such counties from paying the mandatory housing levy; and
9. Section 13 (3) should be amended to remove the word 'approval' but be submitted to Parliament for oversight purposes.

The Committee noted the submissions of the Cabinet Secretary Ministry of Lands, Public Works, Housing & Urban Development and made the following observations and resolutions-

1. That Article 43 (1) of the constitution on Economic and Social Rights, provides for the rights of every person but the government prioritized the right to accessible and adequate housing over the right to be free from hunger yet many citizens could not afford a decent meal;
2. That the Bill sought to impose an additional levy to Kenyans who were already over taxed here most of employees pay slips were already overcommitted due to the high cost of living in the country;
3. That housing is a devolved function and yet the National Government was undertaking functions of the County Governments with regard to implementation of the affordable housing programme;
4. That the structural designs of the housing units did not provide for adequate lighting and ventilation. The Pangani Affordable Housing project for instance was too dark and lacked natural lighting with very little space between the blocks of units;
5. That the Bill did not incorporate cultural preferences and the lifestyles of different ethnicities in the implementation of the affordable housing programme in counties;
6. There was no provision on how the levy fund will finance the three typologies of housing units as provided in clause 2(2) a to c;
7. That the term affordable was relative as the Bill did not stipulate what the term affordable really meant;

8. The Bill should provide for County Boards at County level to guide and advise on designs suitable for people in the counties and soil types for different areas;
9. Definition of affordable housing in clause 2 be amended to remove all definitions of the size of the unit and this to be stipulated in Regulations;
10. Clause 12(3) to be amended by deleting the word 'National Assembly' and replacing it thereafter with the word "Parliament";
11. To amend clause 13(3) by deleting the word "National Assembly" and replacing it with the word "Parliament"; and
12. Amend clause 42 (4) to provide options to access mortgage scheme to finance development of an affordable housing unit on private land;
13. Amend clause 14(3) d (i) to increase the number of nominees of the Council of County Governors so as increase representation of counties in the Board arising from the fact that majority of the affordable housing programs will be implemented on county government land;

MIN/SEN/RTH/366/2024

ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the meeting was adjourned at forty minutes past One O'clock.

SIGNED.....



DATE.....

K → 80
7th March 2024
~~2023~~

(CHAIRPERSON: SEN. PAUL KARUNGO THANGWA, MP)



**MINUTES OF THE SIXTY THIRD SITTING OF THE STANDING COMMITTEE
ON ROADS, TRANSPORTATION AND HOUSING HELD ON FRIDAY, 1ST
MARCH, 2024 AT 01.45 P.M. AT THE AMPHITHEATRE, KICC BUILDING.**

PRESENT

- | | |
|----------------------------------|--------------------|
| 1. Sen. Paul Karungo Thangwa, MP | - Chairperson |
| 2. Sen. Peris Tobiko, CBS, MP | - Vice Chairperson |
| 3. Sen. Mohamed Said Chute, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. John Nderitu, MP | - Member |
| 2. Sen. (Rtd) Justice Stewart Madzayo, CBS, MP | - Member |
| 3. Sen. Edwin Watenya Sifuna, MP | - Member |
| 4. Sen. Enoch Kiiro Wambua, MP | - Member |
| 5. Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP | - Member |
| 6. Sen. Moses Kajwang', CBS, MP | - Member |

IN ATTENDANCE

- | | |
|-------------------------------|------------------------------------|
| 1. Mr. Bernard Mwangi Gichuki | - Gikomba Artisan |
| 2. Ms. Magdalene Wahiga | - Gikomba Artisan |
| 3. Mr. Peter Ndiritu Ndirangu | - Gikomba Artisan |
| 4. Mr. Samuel Oloo | - Jua Kali National Association |
| 5. Mr. Daniel Kigathi | - Matatu Stage Welfare Association |
| 6. Mr. Tony Ogello | - Sec Gen. kamukunji G.A. |
| 7. Mr. Peter Mwena | - Jua Kali National Association |

SECRETARIAT

- | | |
|-------------------------|------------------------------|
| 1. Mr. Charles Ngatia | - Clerk Assistant I |
| 2. Ms. Peris Mukuria | - Clerk Assistant III |
| 1. Mr. Malcom Lee Ngugi | - Legal Counsel I |
| 2. Ms. Lorna Okatch | - Research Officer II |
| 3. Ms. Janice Naserian | - Research Officer III |
| 4. Mr. Ian Otieno | - Audio Officer |
| 5. Mr. John Lckampule | - Assistant Sergeant-At-Arms |
| 6. Mr. Caleb Njogu | - Intern |

MIN/SEN/RTH/366/2024

PRELIMINARIES

The meeting was called to order at forty-five minutes past one O'clock and commenced with a word of prayer by Sen. Paul Karungo Thangwa, MP.

MIN/SEN/RTH/367/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Mohamed Said Chute, MP and seconded by Sen. Peris Tobiko, CBS, MP as follows –

1. Prayer;
2. Adoption of the Agenda;
3. Public hearing on the Affordable Housing Bill, 2023 (National Assembly Bills No. 75 of 2023);
4. Any Other Business; and
5. Adjournment and Date of the Next Meeting.

MIN/SEN/RTH/368/2024

PUBLIC HEARING ON THE AFFORDABLE HOUSING BILL ,2023 (NATIONAL ASSEMBLY BILLS NO. 75 OF 2023)

JUA KALI UMBRELLA ASSOCIATION

The Jua Kali Umbrella Association of Kenya informed the Committee as follows-

1. The Association supports the Housing Bill which seeks to legalize contributions of the Housing Levy by all Kenyans;
2. They are happy with the government's move to provide decent and affordable housing to all poor families living in deplorable conditions in slums who pay rent without any services being provided to them;
3. They support the plan by the government to involve the *Jua kali* sector in not only providing labor but also supplying doors, windows, grills and other items contracted to the *Jua kali* sector;
4. That the Bill should provide for a youth representative position to amplify the voice of the youth in the affordable housing programme for inclusivity in decision making process;
5. That the Bill should have a provision for County Affordable Housing Boards in all counties with a youth minister representative position in each County Board for better presentation;
6. That 10% of houses in each project be allocated to the *Jua Kali* sector; and
7. That over 10,000 registered members of the Association were already making contributions towards ownership of affordable housing units.

MATATU WORKERS ASSOCIATION

Matatu Workers Association informed the Committee as follows-

1. That the Association supports the affordable housing Bill as it is in line with vision 2030 and will further ensure there is decent and affordable housing for the matatu workers who mostly reside in the slums;
2. That the programme will also solve a society problem of feeling disfranchised and if given a decent house, the residents in slums will feel honored;
3. That matatu workers cannot access mortgage and credit facilities due to the nature of their jobs and therefore the Affordable Housing Programme would offer a solution;
4. That the Association has over 8,000 members who are currently making daily contribution of Ksh. 200 towards ownership of houses; and
5. That allocation of houses should be done in a manner that accommodates all groups.

The Committee noted the contents of the submissions for the *Jua Kali* Association of Kenya and the Matatu Welfare Association and made the following resolutions –

1. That climate action be incorporated while designing projects; and
2. That Clause 14 to be amended to provide for informal sector representation in the County Affordable Housing Board.

MIN/SEN/RTH/369/2024

ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the meeting was adjourned at thirty-seven minutes past Two O'clock.

SIGNED.....

DATE.....

(CHAIRPERSON: SEN. PAUL KARUNGO THANGWA, MP)



**MINUTES OF THE SIXTY FORTH SITTING OF THE STANDING COMMITTEE
ON ROADS, TRANSPORTATION AND HOUSING HELD ON TUESDAY, 5TH
MARCH, 2024 AT 11.00 A.M. AT THE LAKE TURKANA, KICC BUILDING.**

PRESENT

- | | |
|---|---------------------|
| 1. Sen. Paul Karungo Thangwa, MP | - Chairperson |
| 2. Sen. Peris Tobiko, CBS, MP | - Vice –Chairperson |
| 3. Sen. Mohamed Said Chute , MP | - Member |
| 4. Sen. John Kinyua, MP | - Member |
| 5. Sen. (Rtd)Justice Stewart Madzayo, CBS, MP | - Member |
| 6. Sen. Enoch Kiiro Wambua, MP | - Member |
| 7. Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|----------------------------------|----------|
| 1. Sen. Edwin Watanya Sifuna, MP | - Member |
| 2. Sen. Moses Kajwang', CBS, MP | - Member |

SECRETARIAT

- | | |
|--------------------------|------------------------------|
| 1. Mr. Charles Ngatia | - Clerk Assistant I |
| 2. Ms. Peris Mukuria | - Clerk Assistant III |
| 3. Ms. Sombe Toona | - Legal Counsel I |
| 1. Mr. Malcom Lee Ngugi | - Legal Counsel I |
| 2. Mr. Washington Otiato | -Media Relations Officer |
| 3. Ms. Lorna Okatch | - Research Officer II |
| 4. Ms. Janice Naserian | - Research Officer III |
| 5. Mr. Ian Otieno | - Audio Officer |
| 6. Mr. Mohamed Ibrahim | - Assistant Sergeant-At-Arms |
| 7. Mr. Caleb Njogu | - Intern |

MIN/SEN/RTH/370/2024

PRELIMINARIES

The meeting was called to order at half past eleven O'clock and commenced with a word of prayer by Sen. Paul Karungo Thangwa, MP.

MIN/SEN/RTH/371/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Mohamed Said Chute, MP and seconded by Sen. Peris Tobiko, CBS, MP as follows –

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the Minutes of the 59th, 60th, 61st, 62nd and 63rd meetings;
4. Matters Arising from the Minutes of the 59th, 60th, 61st, 62nd and 63rd meetings;
5. Consideration of Committee Paper No.46 B on Stakeholder submissions on the Affordable Housing Bill, 2023 (National Assembly Bills No.75 of 2023);
6. Consideration and adoption of the Report on the Affordable Housing Bill, 2023 (National Assembly Bills No.75 of 2023);
7. Any Other Business; and
8. Adjournment and Date of the Next Meeting.

MIN/SEN/RTH/372/2024

CONFIRMATION OF THE MINUTES

Confirmation of the Minutes of the Fifty Ninth meeting held on 22nd February,2024, Sixtieth meeting held on 27th February 2024, Sixty First, Sixty Second and Sixty Third meeting held on 1st March ,2024, was deferred to the next meeting.

MIN/SEN/RTH/373/2024

**CONSIDERATION OF COMMITTEE PAPER
NO.46 B ON STAKEHOLDER SUBMISSIONS ON
THE AFFORDABLE HOUSING BILL, 2023
(NATIONAL ASSEMBLY BILLS NO.75 OF 2023)**

CONSIDERATION OF THE SUBMISSION MATRIX

The Committee considered the content of the submission matrix on the Affordable Housing Bill ,2023 (National Assembly Bills No. 75 of 2023) and made the following observations and resolutions-

1. Clause one on the title, Mr. Peter Kimei had proposed that the name of the Bill to be changed from Affordable Housing Bill2 023 to National Housing Bill. The committee resolved to retain the title of the Bill as the bill seeks to provide affordable housing.
2. Clause 2(1) on the interpretation of the definition of affordable housing by Architectural Association of Kenya. The Committee resolved not to adopt the proposal since the definition had already been provided for in the Bill.
3. Clause 2 (1) on definition of levy by Cliffe Dekker Hofmer –the Committee resolved not to adopt the proposal as it was already provided for in the Bill

4. Clause 2 on definition of gross salary by Kenya Bankers Association and KPMG – the proposal was rejected on the ground that KRA had a system of determining gross salary and gross income;
5. Clause 2(2) on the definition of affordable housing unit in regards to plinth area of the units by Kenya Association of Manufactures- the Committee resolved to reject the proposal since an increase of plinth area of the affordable housing unit would increase the cost of construction thereby rendering the house unaffordable;
6. Clause 4(2) on determination of income for non-salaried persons by Kenya Bankers Association- the proposal was accepted as an incorporation in the regulations to be issued by the Cabinet Secretary Treasury;
7. Clause 2 on definition of institutional housing by TUK- the Committee rejected the proposal since the definition provided in the bill was sufficient;
8. Clause 3(a) on the rights to accessible and adequate housing for citizens by Kenya Bankers Association- the proposal was rejected as the government raises revenue through taxation to provide for the rights of its citizens and the levy is part of the tax.
9. Clause 4(2) (a) and (b) by Kenya Bankers Association on composition of gross salary /income – the proposal was accepted with an amendment for the CS treasury to make the regulation on the matter;
10. Clause 4 KPMG proposed to amend the bill to restrict the levy to a one-time remittance- the committee accepted the proposal and recommended it be actualized in regulations;
11. Clause 4 by KPMG/KBA and KAM to make the contribution voluntary- the committee dropped the proposal since the government requires the levy to finance the affordable housing programme;
12. Clause 4 by Mr. Vincent Muturi, KBA, and KAM to have a maximum limit on the contribution –the Committee rejected the proposal and retain the levy as provided in the Bill to ensure equity;
13. Clause 4 as read together as clause 5 and 7
 - a) On revision of levy rates contributions, the proposal was rejected and the committee resolved to retain the provision as provided the Bill;
 - b) On the proposal on exit option, the proposal was rejected as the levy was a tax and hence a mandatory deduction; however, the Committee has proposed an exit option for those with voluntary contributions;
 - c) On the proposal to suspend collection of the levy on salaried persons pending determination of the court, the Committee rejected this proposal since it is provided for in this Bill which is not subject to the court ruling.

MIN/SEN/RTH/374/2024

ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the meeting was adjourned at Five Minutes past Two O'clock.

SIGNED.....

DATE.....

(CHAIRPERSON: SEN. PAUL KARUNGO THANGWA, MP)



7th March 2023
K. 2024



**MINUTES OF THE SIXTY FIFTH SITTING OF THE STANDING COMMITTEE
ON ROADS, TRANSPORTATION AND HOUSING HELD ON WEDNESDAY, 6TH
MARCH, 2024 AT 8.00 A.M. AT THE LAKE TURKANA ROOM, KICC
BUILDING.**

PRESENT

- | | |
|---|---------------------|
| 1. Sen. Paul Karungo Thangwa, MP | - Chairperson |
| 2. Sen. Peris Tobiko, CBS, MP | - Vice –Chairperson |
| 3. Sen. Mohamed Said Chute , MP | - Member |
| 4. Sen. John Kinyua, MP | - Member |
| 5. Sen. (Rtd)Justice Stewart Madzayo, CBS, MP | - Member |
| 6. Sen. Enoch Kiiro Wambua, MP | - Member |
| 7. Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|----------------------------------|----------|
| 1. Sen. Edwin Watanya Sifuna, MP | - Member |
| 2. Sen. Moses Kajwang', CBS, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|------------------------------|
| 1. Mr. Charles Ngatia | - Clerk Assistant I |
| 2. Ms. Peris Mukuria | - Clerk Assistant III |
| 3. Ms. Sombe Toona | - Legal Counsel I |
| 1. Mr. Malcom Lee Ngugi | - Legal Counsel I |
| 2. Ms. Lorna Okatch | - Research Officer II |
| 3. Ms. Janice Naserian | - Research Officer III |
| 4. Mr. Ian Otieno | - Audio Officer |
| 5. Mr. Mohamed Ibrahim | - Assistant Sergeant-At-Arms |
| 6. Mr. Caleb Njogu | - Intern |

MIN/SEN/RTH/375/2024

PRELIMINARIES

The meeting was called to order at half past Eight O'clock and commenced with a word of prayer by Sen. Paul Karungo Thangwa, MP.

MIN/SEN/RTH/376/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Mohamed Said Chute, MP and seconded by Sen. Peris Tobiko, CBS, MP as follows –

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the Minutes of the 59th, 60th, 61st, 62nd and 63rd meetings;
4. Matters Arising from the Minutes of the 59th, 60th, 61st, 62nd and 63rd meetings;
5. Resumption of consideration of Committee Paper No.46 B on Stakeholder submissions on the Affordable Housing Bill, 2023 (National Assembly Bills No.75 of 2023);
6. Consideration and adoption of the Report on the Affordable Housing Bill, 2023 (National Assembly Bills No.75 of 2023);
7. Any Other Business; and
8. Adjournment and Date of the Next Meeting.

MIN/SEN/RTH/377/2024

CONFIRMATION OF THE MINUTES

Confirmation of the Minutes of the Fifty Ninth meeting held on 22nd February,2024, Sixtieth meeting held on 27th February 2024, Sixty First, Sixty Second and Sixty Third meeting held on 1st March ,2024, was deferred to the next meeting.

MIN/SEN/RTH/378/2024

**CONSIDERATION OF COMMITTEE PAPER
NO.46 B ON STAKEHOLDER SUBMISSIONS ON
THE AFFORDABLE HOUSING BILL, 2023
(NATIONAL ASSEMBLY BILLS NO.75 OF 2023)**

CONSIDERATION OF THE SUBMISSION MATRIX

The Committee considered the content of the submission matrix on the Affordable Housing Bill ,2023 (National Assembly Bills No. 75 of 2023) and made the following observations and resolutions-

1. Clause 4,5,6 and 7 by K. Rose Wanjiru proposing to delete clause 4 to 7 – the proposal was rejected since the levy is meant to finance the development of houses for the benefit of Kenyan citizens;
2. Clause 5 by KBA proposing to delete the employer’s portion of the contribution – the proposal was rejected and retained as it is in the Bill;
3. Clause 5(2) to substitute “business or company” with “person” by SDHUD –the proposal was accepted so as not to discourage investors;
4. Clause 6 on exemption of levy to persons who already own homes by KBA and Ms. K. Rose Wanjiru- The Committee rejected the proposal as the levy was a mandatory tax;

5. Clause 6 on exemption on imposition of the levy by KAM and Mr. Vincent Muiruri -the proposal was accepted;
6. Clause 7 on recovery of levy from defaulters by KAM - the proposal was rejected as it was misplaced. However, the Committee proposed a 3 % penalty on default per month;
7. Clause 7 by KBA where they proposed for a dispute resolution mechanism and a provision of updating the employment / income status on I-Tax was accepted subject to the provision being made in the regulations;
8. Clause 8 by KAM that the fund be managed by the Board or a housing authority was rejected as the Board of the fund is the one managing the fund;
9. Clause 10 by KMA to amend the purpose of the fund to include the design and maintenance of the affordable housing and associated social and physical infrastructure- the Committee proposed to include aspects of design and maintenance as stipulated on purpose of the funds;
10. Clause 10 by KPMG on the purpose of the fund to be a revolving fund for transparency –the Committee observed that proposal was already provided for in clause 43 (1);
11. Clause 10 (2) (c) proposal by KPMG to insert the words “in all counties” after the word “schemes”-the proposal was adopted;
12. Clause 11 on what happens to the funds after allocation by KPMG. The proposal was accepted and The Committee noted that this should be provided for in regulations;
13. Clause 11 (4) (a) proposal by KBA on the allocation of 2% of the monies to the collector to be amended to 0.5 % to the collector (KRA) and 2% to the Board;
14. Clause 13 (1) by KBA on the annual investment programme oversight- the Committee adopted this proposal and additionally proposed the inclusion of National Construction Authority and the State Department for Public Works as implementing agencies in the Third Schedule;
15. Clause 14 (2) by KBA proposed for an explicit prescription of who was the ex-official member of the Board - the Committee adopted the proposal and prescribed that the CEO is the ex-official member of the Board;
16. Clause 14 (3) by KBA to include representation of implementing agencies in the Board the Committee rejected the proposal as one of the members of the Board is the Principal Secretary responsible of matters affordable housing and is also in charge of the proposed agencies;
17. Clause 15(1) by KBA on staggered appointment of Board members - the Committee observed that the provision is already provided for in the Bill under clause 14(6);
18. Clause 15 (2) by KAM to provide for the Board to enter into PPP – The Committee observed that the this was already provided for in the Bill;
19. Clause 14 (3) by KMA on composition of the Board was not adopted.
20. Clause 15 by Cliffe Dekker Hofmeyr on a proposal for data collection in collaboration with stake holders to develop the means testing instruments –the

proposal was accepted by the Committee with the determination to be done by KRA;

21. Clause 15 13 (2) by TAA on the Board offering guidance on matters relating to design, development and maintenance was adopted and provided for under clause 13 (3) to include National construction authority and the state department for housing as implementing agencies in the third schedule;
22. Clause 16 (1) on qualifications for appointment of chairperson and Board members by KMA was rejected. The Committee noted that since the position of the chairperson was non- executive, the qualifications should be measured in respect of years of experience in any professional field;
23. Clause 16(1) (b) and 16 (2) by Oraro & Company Advocates and TAA proposal that addition to experience the chairperson should have experience in the particular field –the Committee adopted the proposal with amendments to have the position of the chair to be from any field;
24. Clause 17 (2) (c) by KAM to delete the word “dishonesty” was rejected as it appears in the leadership and integrity act;
25. Clause 21(3) by Oraro & Company Advocates to provide for an offense to persons who fail to disclose conflict of interest to the Board was not accepted as such an offence is not provided in any statute;
26. Clause 23 (2) by Oraro & Company Advocates to provide for a requirement that the CEO meets requirements of Chapter Six of the constitution was accepted and noted that this had been provided for in the Bill;
27. Clause 23 (1) by KAM on the tenure of the CEO was accepted;
28. Clause 25 by KNHCR in reference to data collection was rejected as the data in reference is data related to the programme and projects under the Bill and hence this did not violate the data protection act;
29. Clause 29(1) by Oraro & Company Advocates that the Board consults SRC to determine the remuneration of staff was dropped because it was not necessary for staff salaries but on Boards allowances;
30. Clause 30 by K. Rose Wanjiku Advocates on interpretation of the person qualifying for an affordable house which was wrongly cross referenced and should refer to clause 38 was accepted subject to it being provided for in the regulations;
31. Clause 32 K Rose Wanjiku Advocates is misplaced and should refer the clause 40. The proposal was accepted but to be provided in the regulations;
32. Clause 33,34,36 by Oraro & Company Advocates to add the words “administrator of the” before the word “fund”. It was accepted with amendments and in its place to read “Board of the fund”;
33. Clause 38 by Oraro & Company Advocates proposing that the contributions be used as deposits into fund was rejected since the contributions are a tax and not a savings;

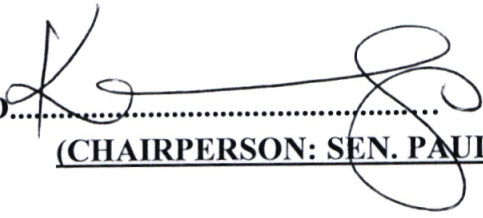
34. Clause 38 by KPMG and Cliffe Dekker Hofmeyr to restrict beneficiaries to one unit. This was accepted and that the beneficiaries should be individual persons and not body corporates;
35. Clause 38 and 39 by Cliffe Dekker Hofmeyr, KPMG, KAM, TAA -the Committee resolved to amend section 38 to clarify that the reference to “person” means natural person, that an applicant is only eligible to receive one house and the CS to provides further eligibility criteria;
36. Clause 39 by Vincent Muiruri proposing that the contributions be used as deposits during allocation of houses was rejected since the contributions are a tax and not a savings;
37. Clause 40 (b) Oraro & Company Advocates proposing listing policies and statutory requirements for off taking by the Board was accepted and to be provided for in regulations;
38. Clause 41 by Vincent Muiruri to define interest on loan interest rates to 3 % -the Committee observed that the interest rate should be provided for in the regulations;
39. Clause 44 Cliffe Dekker Hofmeyr on the penalty of misappropriation of fund was accepted with amendments of a fine ksh, 20,000,000 and imprisonment of 10, years or to both;
40. Clause 47 by Cliffe Dekker Hofmeyr to delete clause 47 2(b)was accepted;
41. Clause 49 (1) Oraro & Company Advocates proposing correction of typographical error was accepted;
42. Clause 49 (1) by Cliffe Dekker Hofmeyr introducing a definition for the term “means testing” and means testing was rejected on the basis that there was no reference to the terms in the Bill;
43. New clause by Vincent Muiruri proposing that the levy be introduced as part of VAT was dropped on the basis that it would complicate its collection;
44. New clause by KPMG proposing to have inclusion of tax incentives to encourage gifts and donations by corporations was rejected on the basis that it would negate the purpose of the Bill;
45. New clause by Peter Kimei to support Kenyans who wish to own houses for occupation was accepted but to be provided in regulations under the rural affordable housing using voluntary contributions as collateral or deposits; and
46. New clause by KPMG to introduce property tax relief for individuals who contribute to the levy was not accepted by the Committee.

MIN/SEN/RTH/379/2024

ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the meeting was adjourned at Six Minutes Past Eleven O'clock.

SIGNED.....



DATE.....

7th March 2024
K

(CHAIRPERSON: SEN. PAUL KARUNGO THANGWA, MP)



MINUTES OF THE SIXTY-SIX SITTING OF THE STANDING COMMITTEE ON ROADS, TRANSPORTATION AND HOUSING HELD ON WEDNESDAY, 6TH MARCH, 2024 AT 01.00 P.M. AT THE LAKE TURKANA ROOM, KICC BUILDING.

PRESENT

- | | |
|--|---------------------|
| 1. Sen. Paul Karungo Thangwa, MP | - Chairperson |
| 2. Sen. Peris Tobiko, CBS, MP | - Vice –Chairperson |
| 3. Sen. Mohamed Said Chute , MP | - Member |
| 4. Sen. John Kinyua Nderitu, MP | - Member |
| 5. Sen. (Dr.) I.elegwe Ltumbesi, CBS, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|---|----------|
| 1. Sen. Edwin Watanya Sifuna, MP | - Member |
| 2. Sen. Moses Kajwang', CBS, MP | - Member |
| 3. Sen. (Rtd)Justice Stewart Madzayo, CBS, MP | - Member |
| 4. Sen. Enoch Kiiro Wambua, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|------------------------------|
| 1. Mr. Charles Ngatia | - Clerk Assistant I |
| 2. Ms. Peris Mukuria | - Clerk Assistant III |
| 3. Ms. Sombi Toona | - Legal Counsel I |
| 4. Mr. Malcom Lee Ngugi | - Legal Counsel I |
| 5. Ms. Lorna Okatch | - Research Officer II |
| 6. Ms. Janice Naserian | - Research Officer III |
| 7. Mr. Ian Otieno | - Audio Officer |
| 8. Mr. Mohamed Ibrahim | - Assistant Sergeant-At-Arms |
| 9. Mr. Caleb Njogu | - Intern |

MIN/SEN/RTII/380/2024

PRELIMINARIES

The meeting was called to order at Six Minutes past One O'clock and commenced with a word of prayer by Sen. Paul Karungo Thangwa, MP.

MIN/SEN/RTH/381/2024**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after it was proposed by Sen. John Kinyua Nderitu, MP and seconded by Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP as follows –

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the Minutes of the 59th, 60th, 61st, 62nd and 63rd meetings;
4. Matters Arising from the Minutes of the 59th, 60th, 61st, 62nd and 63rd meetings;
5. Consideration and adoption of the Committee Stage Amendments;
6. Consideration and adoption of the Report on the Affordable Housing Bill, 2023 (National Assembly Bills No.75 of 2023);
7. Any Other Business; and
8. Adjournment and Date of the Next Meeting.

MIN/SEN/RTH/382/2024**CONFIRMATION OF THE MINUTES**

- a) Minutes of the Fifty Ninth(59th) meeting held on 22nd February,2024 were confirmed as a true record of the deliberations having been proposed by Sen. John Kinyua Nderitu, MP and Seconded by Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP.
- b) Minutes of the Sixtieth(60th) meeting held on 27th February 2024 were confirmed as a true record of the deliberations having been proposed by Sen. Paul Karungo Thangwa, MP and Seconded by Sen. Mohamed Said Chute, MP.
- c) Minutes of the Sixty First meeting (61st) held on 1st March ,2024 were confirmed as a true record of the deliberations having been proposed by Sen. Paul Karungo Thangwa, MP and Seconded by Sen. Mohamed Said Chute, MP.
- d) Minutes of the Sixty Second (62nd) meeting held on 1st March ,2024 were confirmed as a true record of the deliberations having been proposed by Sen. Mohamed Said Chute, MP and Seconded by Sen. Paul Karungo Thangwa, MP.
- e) Minutes of the Sixty Third(63rd) meeting held on 1st March ,2024 were confirmed as a true record of the deliberations having been proposed by Sen. Paul Karungo Thangwa, MP and Seconded by Sen. Mohamed Said Chute, MP.
- f) Minutes of the Sixty Fourth (64th) meeting held on 5th March ,2024 were confirmed as a true record of the deliberations having been proposed by Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP and Seconded by Sen John Kinyua, MP.
- g) Minutes of the Sixty Fifth (65th) meeting held on 6th March ,2024 were confirmed as a true record of the deliberations having been proposed by Sen. Mohamed Said Chute, MP and Seconded by Sen. (Dr.) Lelegwe Ltumbesi, CBS.

MIN/SEN/RTII/383/2024

MATTERS ARISING

EX-MIN/SEN/RTII/378/2024

CONSIDERATION OF THE MATRIX.

The Committee noted that the County Committees would need to be capacitated to carry out their mandates and therefore it is necessary to provide them with an allocation of not less than 0.5% from the funds for administration purposes. Further, they noted that this should be issued as a conditional grant.

MIN/SEN/RTII/384/2024

CONSIDERATION AND ADOPTION OF THE
REPORT ON THE AFFORDABLE HOUSING
BILL, 2023 (NATIONAL ASSEMBLY BILLS
NO.75 OF 2023)

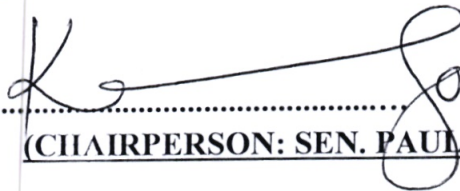
The Committee considered and adopted the report on the Affordable Housing Bill, 2023 (National Assembly Bills No.75 of 2023) having been proposed by Sen. Mohamed Said Chute, MP and adopted by Sen John Kinyua, MP.

MIN/SEN/RTII/381/2024

ADJOURNMENT AND DATE OF THE NEXT
MEETING

There being no other business, the meeting was adjourned at Two O'clock.

SIGNED.....



DATE.....

7th March 2024

(CHAIRPERSON: SEN. PAUL KARUNGO THANGWA, MP)



MINUTES OF THE SIXTY-SEVENTH SITTING OF THE STANDING COMMITTEE ON ROADS, TRANSPORTATION AND HOUSING HELD ON THURSDAY, 7TH MARCH, 2024 AT 11.30 A.M. AT THE BILATERAL ROOM III, KICC BUILDING.

PRESENT

- | | |
|---|---------------------|
| 1. Sen. Paul Karungo Thangwa, MP | - Chairperson |
| 2. Sen. Peris Tobiko, CBS, MP | - Vice –Chairperson |
| 3. Sen. Mohamed Said Chute , MP | - Member |
| 4. Sen. John Nderitu, MP | - Member |
| 5. Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP | - Member |
| 6. Sen. Enoch Kiio Wambua, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|---|----------|
| 1. Sen. Edwin Watanya Sifuna, MP | - Member |
| 2. Sen. Moses Kajwang', CBS, MP | - Member |
| 3. Sen. (Rtd)Justice Stewart Madzayo, CBS, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|------------------------------|
| 1. Mr. Charles Ngatia | - Clerk Assistant I |
| 2. Ms. Peris Mukuria | - Clerk Assistant III |
| 3. Ms. Sombe Toona | - Legal Counsel I |
| 4. Mr. Malcom Lee Ngugi | - Legal Counsel I |
| 5. Ms. Lorna Okatch | - Research Officer II |
| 6. Mr. Ian Otieno | - Audio Officer |
| 7. Mr. Mohamed Ibrahim | - Assistant Sergeant-At-Arms |
| 8. Mr. Caleb Njogu | - Intern |

MIN/SEN/RTH/382/2024

PRELIMINARIES

The meeting was called to order at noon and commenced with a word of prayer by Sen. Paul Karungo Thangwa, MP.

MIN/SEN/RTH/383/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. John Kinyua, MP and seconded by Sen. Mohamed Said Chute, MP as follows –

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the Minutes of the 66th meeting;
4. Matters Arising from the Minutes of the 66th meeting;
5. Consideration of further submissions on the Affordable Housing Bill, 2023 (National Assembly Bills No.75 of 2023);
6. Adoption of Committee Stage Amendments on the Affordable Housing Bill, 2023 (National Assembly Bills No.75 of 2023);
7. Adoption of the Report on the Affordable Housing Bill, 2023 (National Assembly Bills No.75 of 2023);
8. Any Other Business; and
9. Adjournment and Date of the Next Meeting.

MIN/SEN/RTH/384/2024

CONFIRMATION OF THE MINUTES

Minutes of the Sixty Sixth (66th) meeting held on 6th March,2024 were confirmed as a true record of the deliberations having been proposed by Sen. Mohamed Said Chute, MP and Seconded by Sen. John Kinyua, MP.

MIN/SEN/RTH/385/2024

**CONSIDERATION OF FURTHER SUBMISSIONS
ON THE AFFORDABLE HOUSING BILL, 2023
(NATIONAL ASSEMBLY BILLS NO.75 OF 2023)**

The Committee considered and noted further submissions from State Department of Housing and Urban Development on the Affordable Housing Bill, 2023 (National Assembly Bills No.75 of 2023) and made the following resolutions-

1. Amend clause 1 by deleting the title Affordable Housing Bill, 2023 (National Assembly Bills No.75 of 2023) and replacing it with the title Rural and Urban Affordable Housing Act,2024;
2. To insert new sub clauses on clause 47(b) as;
 - a) The Cabinet Secretary shall table before Parliament, the regulations under this section within thirty days of commencement of this act;
 - b) The regulations made under this section shall not take effect without approval of Parliament; and
 - c) If a house of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after submission to its approval, the House shall be deemed to have approved those regulations.
3. Amend clause 48 by inserting a new sub clause -

- a) Any ongoing project or programme funded under section (2) shall be deemed to be a project or programme funded under this Act and shall continue to be implemented after the commencement of this Act.
4. Amend clause 31F by inserting a new clause immediately after clause 31E on the duties of the County Board –
- a) In collaboration with the Board, develop a framework for attainment of affordable housing in the country;

MIN/SEN/RTH/386/2024

ADOPTION OF COMMITTEE STAGE AMENDMENTS ON THE AFFORDABLE HOUSING BILL, 2023 (NATIONAL ASSEMBLY BILLS NO.75 OF 2023)

The Committee Stage Amendments of the Affordable Housing Bill, 2023 (National Assembly Bills No.75 of 2023) were adopted having been proposed by Sen. Mohamed Said Chute, MP and Seconded by Sen. John Kinyua, MP.

MIN/SEN/RTH/387/2024

ADOPTION OF REPORT ON THE AFFORDABLE HOUSING BILL, 2023 (NATIONAL ASSEMBLY BILLS NO.75 OF 2023)

The Report on the Affordable Housing Bill, 2023 (National Assembly Bills No.75 of 2023) was adopted having been proposed by Sen. Peris Tobiko, CBS, MP and Seconded by Sen. Mohamed Said Chute, MP.

MIN/SEN/RTH/388/2024

ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the meeting was adjourned at Twenty-Eight minutes past One O'clock.

SIGNED.....

DATE.....

(CHAIRPERSON: SEN. PAUL KARUNGO THANGWA, MP)

APPENDIX 2

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | THIRD SESSION



STANDING COMMITTEE ON ROADS, TRANSPORTATION AND HOUSING

SUBMISSION MATRIX ON THE AFFORDABLE HOUSING BILL, 2023 (NATIONAL ASSEMBLY BILLS
NO. 75 OF 2023)

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
Title	Peter Kimei	<p><u>Proposal</u></p> <p>Change the name of the Bill from Affordable Housing Bill 2023 to National Housing Bill 2023.</p> <p><u>Rationale</u></p> <p>This will allow the Bill to cover the entire population of Kenya.</p>	<p>The Committee observed that the Bill's primary objective was to provide for affordable housing in the country.</p> <p>Thus the title of the Bill was appropriate.</p>	The Committee rejected the proposal.
	State Department of Housing and Urban Development	<p><u>Proposal</u></p> <p>The Bill be renamed to Rural and Urban Affordable Housing Fund</p> <p><u>Rationale</u></p> <p>This title would encompass the full scope of the Bill</p>	The Committee observed that the Bill now includes provisions related to implementation by county governments.	The Committee adopted the amendment.

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 2 (1) Interpretation</p>	<p>The Architectural Association of Kenya</p>	<p><u>Proposal</u></p> <p>The definition of affordable housing should be expanded to include essential elements such as integrated and inclusive infrastructure and services explicitly. Affordable housing should not only be financially accessible but also inherently equipped with the necessary infrastructure and services to ensure its functionality and livability.</p> <p><u>Rationale</u></p> <p>The definition of affordable housing falls short of encompassing the holistic functionality of a dwelling.</p>	<p>The Committee noted that the definition of affordable housing relates to the type of housing and the category of income earner that it is availed for.</p>	<p>The Committee rejected the proposal.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 2</p>	<p>State Department for Housing and Urban Development</p>	<p><u>Proposal</u></p> <p>Amend definition of affordable housing</p> <p>”Affordable housing” means housing that is adequate and is priced per person or household per month to rent or to own within the means of the majority of the population or as published in the Regulations.</p> <p><u>Rationale</u></p> <p>The limit of 30% on the income of a person to rent or acquire is very restrictive in an Act and should be subject to Regulations or the Board approved requirement. Most jurisdictions that have implemented have shared lessons learnt and it is expected that expenditure and income data will vary every few years and would be published by KNBS. As such the % has been dropped from the Acts and left to Regulations. Locally, KMRC have also shared lessons learnt and have had to make</p>	<p>The Committee noted that the proposal was ambiguous and that the proposal in the Bill should be retained.</p>	<p>The Committee rejected the proposal.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		changes to the 30% rule based on the expertise of the credit reviewing agencies.		
<p>Clause 2 (1) Interpretation</p>	<p>Cliffe Dekker Hofmeyr</p>	<p><u>Proposal</u></p> <p>The definition of Levy be amended to read as " Levy means a contribution to the fund as prescribed under section 4 of this Act for purposes of development of affordable housing.</p> <p><u>Rationale</u></p> <p>The proposed amendment will bring clarity to the definition of the term levy and the Affordable Housing Levy in general. Secondly, the definition will also bring in the intention of the Affordable Housing being a contribution and not a</p>	<p>The Committee noted that the definition of levy in the Bill was sufficient.</p>	<p>The Committee resolved not to adopt the proposal as it was already provided for in the Bill.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		tax, for purposes of getting the end benefits.		
<p>Clause 2 Interpretation</p>	<p>Kenya Bankers Association, KPMG</p>	<p><u>Proposal</u></p> <p>There is no definition of gross salary or Gross Income.</p> <p>Gross salary should include basic salary and regular allowances but exclude variables such as leave allowance, bonus, gratuity, pension, severance pay, or any other terminal dues and benefits</p> <p>Gross income to be defined as the amount of money a person receives periodically from a trade or carrying out a business.</p> <p><u>Rationale</u></p> <p>The Bill does not define the terms gross salary and gross income, leaving room for</p>	<p>The Committee observed that the Kenya Revenue Authority is the entity mandated to collect taxes and has therefore put in place mechanisms to map the various income categories.</p>	<p>The Committee rejected the proposed amendment.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>arbitrary interpretations. According to the Kenya Bankers Association the directives on what constitutes gross by KRA is illegal.</p> <p>Since non-salaried individuals will be required to contribute to the levy, there is need for a formula to determine the gross income of non-salaried individuals.</p> <p>The lack of definition will have a ripple effect on the payroll and the 1.5% by employers based on the gross deduction of employees.</p>		

<p>Clause 2 (2) Interpretation</p>	<p>Kenya Association of Manufacturers</p>	<p><u>Proposal</u></p> <p>(a) Propose to include a wider range of income bands and plinth areas without the limitation of specific properties being targeted to specific income bands.</p> <p>(b) We further propose an increase of the plinth area of the affordable middle class housing unit to be between 80 sqm to 150 sqm.</p> <p><u>Rationale</u></p> <p>The various definitions of what constitutes an affordable housing unit are vague and restrictive. For instance, it is not clear how the various income bands are tied to a plinth area.</p> <p>Further, we observe that the plinth area of at least 60sqm for middle to high income housing is not adequate nor descriptive</p>	<p>(a) The Committee observed that in the definition of ‘affordable housing unit’, persons earning more than Ksh 149,000 had already been catered for and therefore there was no need to create an official income band.</p> <p>(b) In respect to the proposed increase of plinth area, the Committee observed that the definition for affordable housing should not be contained in substantive legislation but instead the CS should have the power to determine the plinth area through regulation.</p>	<p>The Committee resolved to reject the proposal</p>
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		<p>enough to guide the provision of affordable housing.</p> <ul style="list-style-type: none"> • The middle to high income earners will also be repaying loans taken for the houses at a rate of 9%. • At that high rate, compared to the other rates of 3%, the houses need to be bigger. 	<p>(c) The Committee noted that the original Bill provided for repayment interest terms under clause 36 but the Bill as passed by the National Assembly lacks the provision. Nevertheless, the Committee took the view that the interest should ordinarily be contained in subsidiary legislation proposed by the CS</p>	
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CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 2 Interpretation</p>	<p>Technical University of Kenya.</p>	<p><u>Proposal</u> Expand the definition of institutional housing to include student’s hostels within University settings. Presently, the Bill after the 21st February, 2024 amendments only addresses housing for staff within educational institutions.</p>	<p>The Committee observed that the definition of institutional housing could be interpreted to include student quarters.</p>	<p>The Committee rejected the proposal on the grounds that the definition provided in the Bill was sufficient.</p>
<p>Clause 3 (a) Objects and guiding principles</p>	<p>Kenya Bankers Association</p>	<p><u>Proposal</u> This section transfers the mandate of the state to provide affordable housing to its citizens by requiring them to remit monies to the government to realize their right to housing. <u>Rationale</u> Human Rights are inherent to all Kenyans, regardless of their socioeconomic status. It</p>	<p>The Committee noted that in the case of <i><u>Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae) [2021] eKLR</u></i> the Supreme Court <i>observed that a set of supportive measures, that is legislative, policy or programme initiatives,</i></p>	<p>The proposal was rejected by the Committee</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>is the duty of the State to help realize said rights, including the right to housing, and not the mandate of the private citizens as imposed by the housing levy.</p>	<p><i>were to be taken by the State to progressively realise the right to affordable housing.</i> The Bill is therefore a legislative proposal that seeks to ensure the realisation of the right.</p> <p>Further the Committee observed that the government raises revenue through levies and other means to provide for its citizens' rights and therefore the provision of housing under Article 43(1)(b) would require the government to raise revenue.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
Clause 4(2)(b)	Kenya Bankers Association Cliffe Dekker Hofmeyr	<p><u>Proposal</u></p> <p>Provide a system to determine the gains of persons who are not employed in the formal sector and the computation of the levy for nonsalaried persons.</p> <p>Justification</p> <p>It is difficult to measure the income of persons who are not employed in the formal sector. This provision will allow the Government to provide housing for distinct categories of persons with different wages by providing proper systems and checks to assess the gains of persons who are not employed in the formal sector. This system and checks will reduce systemic bias against salaried</p>	The Committee observed that KRA is mandated to collect taxes across different income categories and therefore, there already is a system in place that determines the taxable incomes of non-salaried persons.	The Committee rejected the proposal.

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		individuals and ensure equity amongst Kenyans.		
<p>Clause 4 (2) Imposition of Levy</p>	<p>Kenya Bankers' Association</p>	<p><u>Proposal</u></p> <p>a)Deductions should be made on employees' basic salary and not the gross salary which include benefits that accrue due to special consideration such as hardship allowances.</p> <p>b)For persons with income from other sources besides employment, the Levy shall be at the rate of 1.5% of the additional gross income of a person received or accrued.</p>	<p>The Committee noted that the Bill seeks to collect the levy against both gross income and gross salary and not basic salary.</p>	<p>The Committee rejected the proposal.</p>
<p>Clause 4 Imposition of Levy</p>	<p>KPMG</p>	<p><u>Proposal</u></p>	<p>The Committee noted that the Bill seeks to charge both gross income and gross salary.</p>	<p>The Committee rejected the proposal.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>Amend the Bill to restrict the levy to a one-time remittance paid once upon calculating their total gross income.</p> <p><u>Rationale</u></p> <p>Given the absence of a clear definition of gross income within the draft Bill, the amendment will prevent individuals from being required to remit the levy on multiple incomes if they earn income from both businesses and a salary.</p>		
Clause 4	Peter Kimei	<p>Proposal</p> <p>That the percentage tax be obligated only on employee or employer, similar to PAYE. Imposing 1.5% on employee and 1.5% on employer amounts to double taxation.</p>		

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>Justification</p> <p>Comparing this to NSSF which has similar deductions, the amount deducted on NSSF is a savings not a tax. I therefore propose a National Housing tax of 2% deducted on gross income (for employed people, deducted at source by employer similar to PAYE)</p>		
<p>Clause 4</p> <p>Imposition of Levy</p>	<p>KPMG</p> <p>Kenya Bankers' Association</p> <p>KAM</p> <p>Vincent Muiruri</p>	<p><u>Proposal</u></p> <p>KMA proposes the contribution should be voluntary.</p> <p>KPMG proposes the introduction of a maximum limit of 10, 000 for contributions to the housing levy. KBA and KAM propose a cap at Kes 5,000 in</p>	<p>The Committee observed that the purpose of the Levy is to increase the Funds available to realize the provisions of Article 43(1)(b) of the Constitution and the inclusion of a tax incentive would jeopardize this noble cause.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>view of economic hardship, high cost of living and other increased taxes and levies.</p> <p>Mr. Muruiri proposes that the levy be reduced to 1% of basic pay and have a capping of Kshs. 2,000.</p> <p><u>Rationale</u></p> <p>This proposal will encourage more public uptake and demonstrate some level of equity on the part of the government especially to those who may contribute but not qualify under the Affordable Housing Scheme.</p>	<p>The Committee further observed that capping the contribution by high income earners would be unfair to the low income earners.</p>	
<p>Clause 4 as read together with clause 5 and clause 7 of</p>	<p>Kenya Bankers Association</p>	<p><u>Proposal</u></p> <p>The Government should reconsider revising the rates for both the contributions towards the Affordable</p>	<p>The Committee noted that the contributions should remain at one point five percent as proposed by clause 4 as read</p>	<p>The Committee rejected the proposal to reconsider revising rates</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
the Bill; and Sections 31B and C of the Employment Act		<p>Housing Fund and the penalty rates as well.</p> <p><u>Rationale</u></p> <p>Given the current economic crisis, the proposed rate for the Affordable Housing Levy is high. The proposed levy could potentially incentivize employee lay-offs.</p> <p>Furthermore, the proposed penalty rate for non-remittance of the levy is also disproportionately high considering the proposed deduction is a new one and employers (including Banks) need to allocate some of their profits towards payment of the levy, outside of their existing obligations.</p>	<p>together with clause 5 however, the Committee agreed that given the importance of the Fund, the penalties under the Bill should be high in order to deter any malfeasance.</p>	<p>but accepted the increase in penalties.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p><u>Proposal</u></p> <p>There should be an exit option to make it fair for those not eligible to own a house or those who will not get houses.</p> <p><u>Rationale</u></p> <p>The heavy financial burden on Employers and Employees.</p>	<p>The Committee noted that the Bill does not provide for exit from the fund save for persons who are making voluntary contributions to the Fund.</p> <p>In addition, under clause 42 (4) the Bill provides for the possibility of withdrawal of the voluntary contributions when a contributor fails to be provided with a unit.</p>	
		<p><u>Proposal</u></p> <p>The levy should not be imposed on salaried persons pending determination of the same for non-salaried persons as this amounts to discrimination as per the</p>	<p>The Committee noted that KRA already has a framework to determine the income of unemployed persons.</p>	<p>The Committee rejected the proposal.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		judgement pronounced under Constitution Petition E181 of 2023.		
		<p><u>Rationale</u></p> <p>The judgement from the Constitution Petition E181 of 2023 held that the deduction of the levy on persons in formal employment to the exclusion of others was unfair, discriminatory, unfair, arbitrary and in violation of articles 27 and 201 (b)(i) of the Constitution. Hence, continued deduction of the levy without the same applying to the non-salaried persons perpetuates the same discriminatory practice.</p>		
Clause 4,5,6 and 7	K.Rose Wanjiru	<u>Proposal</u>	The provision of who qualifies for allocation of the affordable housing units was contained in	

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
	Advocate of the High Court.	<p>Delete clause 4-7 and consequently delete Clause 9 (a) that provides that monies deducted or payable as the levy under the Act be part of the Fund.</p> <p><u>Rationale</u></p> <p>a) 1.5% gross salary deduction for affordable housing includes both Kenyan and foreign employees, but only Kenyan citizens are eligible for these houses according to section 30 of the Bill. This exclusion of foreigners contradicts Article 43(1) which mentions “every person” thus violating the principles of non-discrimination outlined in Article 10(2) and 27 of the Constitution.</p> <p>Financing and therefore there has been established practice by government that</p>	the Bill as published but is not in the Bill as transmitted to the Senate.	

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		shows an imposition of a levy is unnecessary as it only seeks to further burden Kenyans with taxes for an ambition that may never be realized or benefitted from by the very Kenyan.		
<p>Clause 5</p> <p>Obligation of an employer.</p>	<p>State Department of Housing and Urban Development</p>	<p><u>Proposal</u></p> <p>Substitute “business or company” with “person”</p> <p><u>Rationale</u></p> <p>“person” is consistent with section 4 (2) (b) and person covers both incorporated and unincorporated entities which should all be treated consistently e.g. NGO’s which are not business or companies</p>	<p>The Committee opined that the proposed definition would promote fairness.</p>	<p>The Committee accepted.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 5</p> <p>Obligation of an employer.</p>	<p>Kenya Bankers Association</p>	<p><u>Proposal</u></p> <p>The employer's contribution should be deleted.</p> <p><u>Rationale</u></p> <p>a)Section 31 of the Employment Act requires employers to provide housing.</p> <p>b)The additional contribution by the employer results in a total contribution of 3% by the formal employees whereas non-salaried persons are only required to pay 1.5% which is discriminatory contrary to Article 27 and 202(b)(i) of the Constitution.</p> <p>c)Employers' contribution to the affordable housing fund increases their</p>	<p>The Committee observed that the Employers are under an obligation under the Employment Act to provide housing to their employees and further that the proposed levy seeks to alleviate the burden of housing in the country and is therefore a means to which the employers may contribute to the attainment of Article 43(1)(b) but may provide an avenue through which employers may meet their obligations under the Employment Act.</p>	<p>The proposal was rejected by the Committee.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		operating expenses, yet they are not beneficiaries of the fund.		

<p>Clause 6</p> <p>Exemption from imposition of the Levy.</p>	<p>Kenya Bankers Association</p> <p>K. Rose Wanjiru</p>	<p><u>Proposal</u></p> <p>The CS Treasury should consider exempting persons who already have their own houses, non-executive directors, secondary employees, foreigners, and any other category of persons who will not be eligible for the affordable housing units.</p> <p><u>Rationale</u></p> <p>a)The imposition of the levy overlooks the fact that not all Kenyans desire affordable housing units.</p> <p>b)The units are available on application.</p> <p>c)It may be assumed that the levy would finance the construction of the affordable houses but such an assumption only leads to possibility of revenue leakage.</p>	<p>The Committee observed that the purpose of the Levy is to increase the Funds available to realize the provisions of Article 43(1)(b) of the Constitution and the inclusion of exemptions would jeopardize this noble cause.</p>	<p>The Committee rejected the proposal on the grounds that the levy was a mandatory tax.</p>
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CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 6</p> <p>Exemption from imposition of levy.</p>	<p>Kenya Association of Manufacturers</p>	<p><u>Proposal</u></p> <p>We propose that the circumstances under which the Cabinet secretary may exempt an employer from paying the Levy are made clear.</p>	<p>The Committee noted that Clause 47 (2) (a) of the Bill requires that the criteria shall be prescribed under regulations.</p> <p>The Committee therefore proposed that the Regulations be tabled before Parliament before they take effect. The Committee further directed that the CS be provided with timelines within which to table the regulations and the time within which parliament is to conclude and approve the consideration of this urgent regulations.</p>	<p>The Committee accepted the proposal</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
	Vincent Muiruri	The levy is unfair since it does not make it compulsory for the business community to contribute.	The exemption for businesses and companies only applies if the business or company remits the amount equivalent to the deduction made on the salary of the employee.	The Committee accepted the proposal.
<p>Clause 7 Debt Recovery.</p>	Kenya Association of Manufacturers	<p><u>Proposal</u></p> <p>Delete the 3% penalty and instead have the penalty be pegged to the prevailing central bank interest rate.</p> <p><u>Rationale</u></p> <p>This proposal is based on the following justifications:</p> <p>a)The proposed penalty of 3% translates to 36% per year which is very punitive.</p>	The provision was in the Bill as published but is not present in the Bill as transmitted to the Senate. Instead the Bill provides for the levy to be debt due to the Government and recoverable in Accordance with the Tax Procedure Act, 2015.	The Committee rejected the proposal on recovery of levy however it proposed a 3% penalty on default per month.

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 7</p> <p>Debt Recovery</p>	<p>Kenya Bankers Association</p>	<p><u>Proposal</u></p> <p>a)All contributors should declare whether there have been any changes to their status on iTax i.e., unemployment to prevent accrual of fines and penalties.</p> <p>b)The Bill should also have dispute resolution mechanisms for such matters.</p> <p><u>Rationale</u></p> <p>Self-declaration will enable the collector to keep updated records on the status of the taxpayers and not impose penalties for the period where the taxpayer did not earn any income.</p>	<p>The Committee observed that the Levy is charged on gross salary and gross income and therefore should a contributor's status change to the effect that the contributor loses income, the levy shall not be chargeable.</p>	<p>The Committee rejected the proposal.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 7 Debt Recovery</p>	<p>State Department of Housing and Urban Development</p>	<p><u>Proposal</u> The Committee reinstates clause 7 as was in the Bill published by the National Assembly</p> <p><u>Rationale</u></p>	<p>The Committee noted that the penalty as prescribed in the original Bill would serve as a deterrent.</p>	<p>The Committee accepted.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 8</p> <p>Establishment of the Fund.</p>	<p>Kenya Association of Manufacturers</p>	<p><u>Proposal</u></p> <p>We propose that the fund be managed by the Board or a Housing Authority.</p>	<p>The Board of the Fund is the one managing the Fund see clause 8.</p>	<p>The proposal was rejected as the Board is a body corporate that is managing the Fund.</p>

<p>Clause 9 Sources of Funds.</p>	<p>KPMG Rose Wanjiru State Department of Housing and Urban Development.</p>	<p><u>Proposal</u></p> <p>We propose that the clause and the Bill be amended to enable the entity to leverage debt instruments such as concessional loans, infrastructure bonds.</p> <p><u>Rationale</u></p> <p>The Bill in its current structure does not lend itself to scalability through leverage.</p> <p>According to KPMG the Housing and Development Board Structure (HDB) in Singapore which recently issued a green bond worth US\$1.1bn. The bonds proceeds are to be channelled into “eligible” projects. HDB has a credit rating and is active in the capital markets.</p>	<p>The Committee noted that the housing deficit in the country is significant and that the monies being collected from the levy alone may be insufficient to keep up with the need.</p> <p>Therefore, it would be prudent to provide for a borrowing mechanism with approval from the CS, National Treasury.</p>	<p>The Committee accepted the proposal.</p>
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<p>Clause 9(d)</p>	<p>KPMG The Architects Alliance ('TAA')</p>	<p><u>Proposal</u> Amend section 9 (d) to accurately refer to the appropriate section on voluntary contributions.</p>	<p>There is a cross referencing error.</p>	<p>The Committee accepted the proposal.</p>
		<p><u>Rationale</u> Clause 9 (d) states that voluntary contributions made under Section 38 shall be paid into the Housing Fund. Clause 38 of the Bill does not refer to voluntary contributions. The relevant section would be Clause 42.</p>		

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 10 Purpose of the fund.</p>	<p>Kenya Manufacturing Authority</p>	<p><u>Proposal</u></p> <p>We propose to amend the subclause to read as follows:</p> <p><i>(1) The purpose of the Fund shall be to provide funds for the design, development and maintenance of affordable housing and associated social and physical infrastructure.</i></p> <p><u>Rationale</u></p> <p>It is important to indicate the full life cycle of the affordable housing ecosystem.</p>	<p>The Committee agreed with the stakeholder's proposal that the functions of the Fund should include aspects of design and maintenance of affordable housing. However, the Committee rejected the amendment as proposed by the stakeholder on the grounds that the proposal will do away with provision of funds for the development of institutional housing.</p>	<p>The Committee accepted the proposal.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 10</p> <p>Purpose of the Fund.</p>	<p>KPMG</p>	<p><u>Proposal</u></p> <p>Section 10 should set out the purpose of the fund and commit to its revolving nature. The clause should be redrafted to read–</p> <p>“The Fund is established with the explicit commitment to its revolving nature, ensuring sustainable utilisation and replenishment of resources for ongoing initiatives.”</p> <p><u>Rationale</u></p> <p>Section 10 does not explicitly state the revolving nature of the fund and the intention to use the fund as a guarantee.</p>	<p>Clause 10 (2) requires that all proceeds of sale, rent and interest shall be paid into the Fund but the Bill does not make specific reference to its revolving nature.</p> <p>Since clause 43 (1) requires the CEO to keep proper books of account of the income, expenditure and assets of the Fund there will be transparency in respect to how much money is paid out of the fund and for what purpose.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<ul style="list-style-type: none"> Amend Clause 10 to read Revolving the fund forces transparency through the process as the accounts will reflect the performance of the different allocations. 		
<p>Clause 10 (2)(b)</p>	<p>Kenya Bankers Association</p>	<p><u>Proposal</u></p> <p>Repeal the provision proposing to provide low-interest loans for the acquisition of affordable housing units within the approved affordable housing schemes.</p> <p><u>Rationale</u></p> <p>This is a tax contributory fund and Government funds cannot give contributors loans at low interest rates.</p>	<p>The Committee noted that the objective of the Fund is to provide a pool of monies that can facilitate the attainment of Article 43(1)(b) of the Constitution. One of the means through which this will be achieved would be through the provision of affordable mortgages that are intended to provide an opportunity for those with low income to access</p>	<p>The Committee rejected the proposal.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
			payment facilities that will allow them to own housing units.	
Clause 10 (2) (c)	KPMG	<p><u>Proposal</u></p> <p>Amendment of clause 10 (2) (c) to include the word “in all counties.”</p> <p><u>Rationale</u></p> <p>Clause 10(c) states that the Housing fund shall provide for the setup of affordable housing schemes, without mandating their presence in all counties, as previously worded in the Bill tabled before the National Assembly. The omission of the words "in all counties" could potentially introduce bias.</p> <p>Distributing housing development more evenly across all counties will ensure a</p>	The Committee observed that the programmes would be implemented in counties and it is therefore necessary to create a mechanism within counties to support the Board.	The Committee adopted the proposal and resolved to establish the County Affordable Housing Committees and provide them with a conditional grant of not less than 0.5% allocation from the Fund to carry out their mandate.

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		more balanced economic outlook across the country.		
<p>Clause 10 (2)</p> <p>Purpose of the Fund.</p>	<p>State Department of Housing and Urban Development</p>	<p><u>Proposal</u></p> <p>Insert a new function of the Board to provide services to assets of the Fund</p> <p><u>Rationale</u></p> <p>Need to be intentional that the Fund will be able to appoint service providers example, estate agents to collect service charge as service providers amongst others</p>	<p>The Committee observed that the Board will need to provide services to projects under their management.</p>	<p>The Committee accepted.</p>
<p>Clause 11</p> <p>Allocations out of the Fund.</p>	<p>KPMG</p>	<p><u>Proposal</u></p> <p>a) It should capture what happens to funds once allocated, i.e., how they are revolved to complete the flow of funds.</p>	<p>The Committee noted that the Bill does not prescribe the processes involved in allocation. However, under clause 47 (2) (d)</p>	<p>The Committee rejected the proposal.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>b) It should encompass the mechanisms for the allocation and subsequent revolving of funds to ensure a continuous flow of resources.</p> <p>c) Additionally, it should stipulate that utilizing the fund as a guarantee necessitates significant interventions, such as seeking a credit rating or undergoing a ratings process.</p> <p>d) To use the fund as a guarantee will also require significant interventions e.g., seeking a credit rating/going through a ratings process. By putting this in the Act, it helps the board and management and gives confidence to the rating agency that this was contemplated.</p>	<p>it is proposed that the Cabinet Secretary develop regulations for the better carrying out of Part IV- Implementation of the Affordable Housing.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 11 (4) (a) Allocation of funds.</p>	<p>Kenya Bankers Association</p>	<p><u>Proposal</u> The proposed Bill allocates 2% of the monies to the Collector yet the purpose for this allocation has not been stated.</p> <p><u>Rationale</u> Justification for the allocation of the 2% to the Collector should be provided as the Collector has already been receiving the levy from the formal sector.</p>	<p>The Committee observed that the primary purpose of the Fund is to provide affordable housing for all Kenyans and in particular, those in the low income bracket. Moreover, KRA's mandate is to collect on behalf of national government levies and other related remittances.</p> <p>Therefore, the Committee proposed the reduction of the 2% contained in the Bill to 0.5% on the grounds that whereas KRA is mandated to collect remittances on behalf of the national government, there may be a need</p>	<p>The Committee reduced the proposed allocation of 2% to 0.5%.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
			to facilitate them to carry out this additional task.	

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 12</p> <p>Five-year affordable housing investment programme</p>	<p>State Department for Housing and Urban Development</p>	<p><u>Proposal</u></p> <p>To require that the affordable housing investment programme be approved only by Cabinet and tabled before National Assembly.</p>	<p>The Committee observed that Housing is a shared function with the National Government being in charge of policy formulation whilst the county governments charged with housing.</p> <p>Therefore the Committee required that the investment programme be tabled in both Houses</p>	<p>The Committee amended the requirement to provide that the five year investment programme be tabled in both Houses.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
Clause 13	Vincent Muiruri	<u>Proposal</u>	The Committee observed that all	The Committee rejected
Annual Investment Programme		(a) 70% of affordable houses are available to consistent contributors. -This will attract the business community to contribute.	<p>Kenyans with income are either compulsory contributors or voluntary contributors. Therefore they are all consistent contributors and they should be allocated an affordable housing unit when they meet the eligibility criteria.</p> <p>The committee however noted that the prospect of owning homes was eliciting a lot of interest and therefore it was important to safeguard the ongoing projects.</p>	<p>the proposed amendment but directed that an amendment be develop to the transitional clause to ensure the saving of ongoing programmes.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 13(1)</p> <p>Annual Investment Programme</p>	<p>Kenya Bankers Association</p>	<p><u>Proposal</u></p> <p>Clearly state that the Board shall have oversight and enforcement powers over the development of affordable housing.</p> <p><u>Rationale</u></p> <p>The inclusion of enforcement powers will give the Board the gravitas to oversee the development of the affordable housing units and avoid any misappropriation of funds.</p>	<p>Clause 24 (j) of the Bill requires the CEO to coordinate the monitoring and evaluation of affordable housing projects and programmes financed from the Fund. Save for clause 27 which empowers the CEO to access information on any programme and project the Bill does not provide express inspection and enforcement provisions.</p> <p>The Committee observed that the Board should collaborate with NCA and the State Department for Public Works to inspect projects and enforce the</p>	

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
			requirements of the Act and the Regulations thereunder.	
Clause 14 (2)	Kenya Bankers Association	<p><u>Proposal</u></p> <p>The ex-officio members should be clearly identified and defined to ensure that there is no abuse of power and misappropriation of allowances.</p> <p><u>Rationale</u></p> <p>Various provisions mention that there will be ex-officio members of the Board. It is</p>	The Committee noted that it is implied that the only <i>ex-officio</i> member of the Board is the CEO.	The Committee adopted the proposal to clarify by expressly indicating that the <i>ex-officio</i> member is the CEO.

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>important that these members are identified and defined. In addition, it is not clear whether ex-officio members will be entitled to allowances.</p>		

<p>Clause 14 (3) Composition of the Board.</p>	<p>Kenya Bankers' Association</p>	<p><u>Proposal</u></p> <p>There should be representation from each of the agencies receiving funds such as the National Housing Corporation, projects under the Kenya Slum Upgrading and Low-Cost Housing and the State Department of Housing and Urban Development to ensure free flow and access to information.</p>	<p>The Committee noted that the stakeholder made reference to clause 12 however the Board is now established under clause 14.</p>	<p>The Committee rejected the proposed amendment.</p>
		<p><u>Rationale</u></p> <p>Representation of the various agencies will ensure free flow and access to information amongst the agencies. The Board will also leverage on similar projects to achieve economies of scale.</p>	<p>The Committee observed that the NHC, the State Department of Housing and Urban Development are all under the Principal Secretary in charge of housing who is part of the proposed membership of the Board.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 15 (1) Tenure of Office</p>	<p>Kenya Bankers Association</p>	<p><u>Proposal</u> Taking into consideration the fixed contracts, the appointment of Board members should be staggered for succession planning purposes.</p> <p><u>Rationale</u> It is stated that there will be 5-year affordable housing investment programme hence there should be proper succession planning procedures in place to ensure business continuity.</p>	<p>The Committee observed that the staggered appointments are already provided for under clause 14(6) of the Bill.</p>	<p>The Committee rejected the proposal.</p>

<p>Clause 15 (2) Functions of the Board.</p>	<p>Kenya Associations of Manufacturers</p>	<p><u>Proposal</u></p> <p>We propose –</p> <p>(a) to insert a new paragraph (j) that allows the Board to enter into Public Private Partnerships.</p> <p>(b) to insert a new paragraph (k) that gives powers to the Board to make dwellings available for the purpose of sale to eligible applicants under affordable dwelling purchase arrangements and may, in accordance with the Housing Acts and regulations made under any of those Acts, acquire, build or cause to be built, or otherwise provide or facilitate the provision of, dwellings for that purpose.</p> <p><u>Rationale</u></p>	<p>(a) The Committee observed that the Board is empowered under clause 35 of the Bill to enter into an agreement with a private institution to develop and construct affordable housing units. In addition, Part IV of the Bill provides that the Board of the Fund is authorised to appoint a national government agency to develop affordable housing units, enter into agreements with public institutions to develop institutional housing or private institutions to construct affordable housing units. Therefore the proposal in</p>	<p>The Committee rejected the proposed amendment.</p>
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		<p>This is based on the following justifications–</p> <ul style="list-style-type: none">• PPP arrangements will allow the Board to fully realize the goal of building affordable housing sustainably.• In addition, the Board's powers are designed to empower it to play a proactive role in addressing housing affordability, social equity, urban planning, and community development.	<p>regard to paragraph (j) is already catered for.</p> <p>(b) In respect to the power of the Board to make Houses available, the Committee observes that under clause 40, the Board may offtake affordable housing units approved by the Board that meet the policy and therefore the Board will have the power to make the units available from such offtake properties..</p>	
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CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 15 (3) Composition of the Board</p>	<p>Kenya Associations of Manufacturers</p>	<p>We propose to amend as follows:</p> <p>(e) three persons, not being public officers, appointed by the Cabinet Secretary of whom</p> <p>(i) one shall be a nominee of the Kenya Association of Manufacturers;</p> <p>(ii) one shall be a nominee of The Architects Alliance; and</p> <p>(iii) one shall be a nominee of the Law Society of Kenya.</p>	<p>The Committee noted that the Bill does not provide for the organisations from which the nominees should be chosen from. However, it does prescribe that the persons have qualifications in built environment, finance or law. Furthermore, the proposed amendments, if enacted, run the risk of breaching the recommendations of Mwongozo Corporate Governance Code.</p>	<p>The Committee rejected the proposal</p>
<p>Clause 15 Functions of the Board</p>	<p>Cliffe Dekker Hofmeyr</p>	<p><u>Proposal</u></p> <p>Insert the following new section (15)(2)(1)(k)-</p>	<p>The Committee noted that KRA already has a framework to determine the income of unemployed persons.</p>	<p>The Committee rejected the proposal.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>Without prejudice to the generality of subsection (1), the Board shall;</p> <p>(k) collect data in collaboration with the determined stakeholders, in relation to means testing and develop a means testing instrument.</p> <p><u>Rationale</u></p> <p>The purpose of this introduction is to enhance the functions of the board, to give life to the proposed introduction of section 4 (3) that seek to empower the Board and KRA to collect data to determine the income of unemployed persons.</p>		
<p>Clause 15 13 (2) Functions of the Board</p>	<p>The Architects Alliance ('TAA')</p>	<p><u>Proposal</u></p> <p>Add that the Board shall offer guidance on matters relating to design, development</p>	<p>The Committee agreed with the stakeholder's proposal that the functions of the Fund should</p>	<p>The Committee adopted the amendment and</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		and maintenance of affordable housing and the associated physical infrastructure	include aspects of design and maintenance of affordable housing.	proposed that it is best placed under clause 10.
<p>Clause 16 (1) Qualifications for appointment</p>	<p>Kenya Association of Manufacturers</p>	<p><u>Proposal</u></p> <p>We propose that the Chairperson:</p> <p>(i) has qualifications in the built environment.</p> <p>(ii) be appointed from amongst the board members who have been nominated by the professional bodies; and</p> <p>(iii) be independent.</p> <p><u>Rationale</u></p>	<p>The Committee observes that the Chairperson is head of the institution and is responsible for policy formulation. Therefore, it is proposed that the qualifications of the chairperson be measured in respect to years of experience rather than by particular professional fields.</p> <p>It is therefore proposed that the Chairperson should have a degree from a recognised university, 15 years experience</p>	<p>The Committee rejected the proposal and prescribed the years of experience required of the Chairperson.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>This will ensure that the Board is independent and makes decisions based on the objects of the Act.</p>	<p>in a senior management position in either the public service or private sector.</p> <p>In addition, the Committee noted that the technical qualifications are majorly required by the CEO who is the technical advisor to the Board.</p>	
<p>Clauses 16(1)(B) and 16(2)</p>	<p>Oraro & Company Advocates</p> <p>Architectural Alliance of Kenya</p>	<p><u>Proposal</u></p> <p>We propose the addition of a prescribed period of experience in the relevant fields (housing, banking, finance or law) before a person can be appointed as a Chairperson or a member of the Boar</p> <p><u>Rationale</u></p>	<p>The Committee observed that the provisions of clause 14 (3)(e) are sufficient in respect to qualifications of the members to be nominated by the Cabinet Secretary.</p>	<p>The Committee rejected the proposal.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>requiring a minimum level of experience in a certain field ensures that individuals appointed to positions possess the relevant skills, knowledge and expertise to perform their duties effectively.</p> <p>Secondly, the minimum years of experience for the chief executive officer and corporation secretary have been included in clauses 23(2)(b) and 28(2)(c) respectively</p>		
<p>Clause 17 (2) Tenure of office</p>	<p>Kenya Associations of Manufacturers</p>	<p><u>Proposal</u></p> <p>We propose to delete the word “dishonesty” appearing in paragraph</p> <p><u>Rationale</u></p> <p>The word ‘dishonesty’ is open to multiple interpretations.</p>	<p>The Committee noted that the Leadership and Integrity Act and the Public Officers Act requires public officers to act with integrity and honesty at all times.</p>	<p>The Committee rejected the proposal.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<ul style="list-style-type: none"> • It may be abused to remove persons from the Board for other reasons other than, or not connected to corruption. 		
<p>Clause 21(3) Disclosure of interest</p>	<p>Oraro & Company Advocates</p>	<p><u>Proposal</u></p> <p>We propose the inclusion of an offense when a member fails to disclose his/her conflict of interest to the Board.</p> <p><u>Rationale</u></p> <p>This proposal acts as a deterrence as it ensures that a member complies with the provisions of this clause by disclosing a conflict of interest to the other members of the Board.</p> <p>Secondly, disclosing a conflict of interest holds board members accountable for their actions and decisions. It ensures that they</p>	<p>The Committee observed that the Bill provides for the penalty for failure to disclose interest.</p>	<p>The Committee rejected the proposal.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>act in the best interests of the Board rather than their personal interests. This accountability fosters a culture of responsibility and encourages ethical behaviour throughout the organisation</p>		
<p>Clause 23(2) Chief executive Officer of the Board</p>	<p>Oraro & Company Advocates</p>	<p><u>Proposal</u></p> <p>In addition to the qualifications provided, we propose that a person meets the requirements in chapter six of the Constitution as a requirement for appointment as a chief executive officer of the Board.</p> <p><u>Rationale</u></p> <p>Leadership and integrity principles ensure that the person possesses a strong commitment to ethical conduct.</p>	<p>The Committee agreed with the stakeholder's proposal.</p>	<p>The Committee adopted the proposal.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		Secondly, this requirement has been included in clause 16(2)(a) of the Bill as a qualification requirement for appointment as a member of the Board		
Clause 23 (1) Chief Executive Officer of the Board	Kenya Association of Manufacturers	<u>Proposal</u> (i) Add a new sub clause that reads as follows: The Chief Executive Officers shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.	The Committee observed that the Mwongozo guidelines provide for a term of three years renewable once i,e a maximum of six years.	The Committee adopted the proposal.
Clause 25 Funds not to be overdrawn	KNHCR	<u>Proposal</u> This clause violates data subjects' rights to privacy as provided for under Article 31 of the Constitution of Kenya. It also	The Committee observes that the current clause 25 prohibits. Nonetheless, the Committee notes that under clause 25 of the Bill tabled before the National Assembly, the CEO was	The Committee rejected the proposal.

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>violates provisions under the Data Protection Act.</p>	<p>empowered to access any programme and project related data that the administrator considers necessary for the performance of their functions under the Act.</p> <p>In the Bill transmitted to the Senate, this provision is now contained in clause 27.</p> <p>The Committee further observed that the data in reference is data related to the programme and projects under the Bill and therefore should not violate the Data Protection Act given that the Board is managing the approved projects.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 29(1) Staff of Board</p>	<p>Oraro & Company Advocates</p>	<p><u>Proposal</u></p> <p>We propose that the remuneration of the staff is determined by the Board in consultation with the Salaries and Remuneration Commission.</p> <p><u>Rationale</u></p> <p>This proposal will be in line with Article 230(4) (a) of the Constitution which gives the Salaries and Remuneration Commission power to set and review the remuneration and benefits of all public officers.</p>	<p>The Committee noted that the SRC's mandate is limited to state officers.</p>	<p>The Committee rejected the proposal.</p>

<p>Clause 30 Delegation of powers</p>	<p>K,Rose Wanjiku Advocate of the High Court</p>	<p><u>Proposal</u> Proposal to amend clause 30 to read: “a person qualifies to be allocated an affordable housing unit if that person is at least eighteen years of age and has submitted an application to the relevant agency in the manner specified.</p> <p><u>Rationale</u> The provision discriminates against foreigners who are in the country either by reason of work or forced migration and yet are required to comply with the provisions of the Act. The provision also contravenes Article 10(2) and 27 of the Constitution on non-discrimination.</p>	<p>The Committee noted that the original clause 30 of the Bill tabled in the National Assembly provided that a person is eligible for allocation of a housing unit if they are a Kenyan who is at least 18 years and holds an identification card.</p> <p>The Committee further noted that the Bill transmitted to the Senate lacks the eligibility criteria. The Committee therefore proposed that clause 38 be amended to provide that a natural person may on application be allocated one affordable housing unit for their lifetime and that a detailed eligibility criteria would be prescribed in regulations.</p>	<p>The Committee rejected the proposal.</p>
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CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 32 Allocation of land</p>	<p>K.Rose Wanjiru Advocate of the High court</p>	<p><u>Proposal</u></p> <p>(a) Amend section 32 of the Bill and include aspects of sanitation for the Bill to give Article 43(1) (b) full effect.</p> <p>(b) delete clause 32 of the Bill and replace it with a new section 32 which would read: An agency may take- off affordable housing units under an affordable housing scheme if the affordable housing scheme –</p> <p>a. is supported by a report on housing needs</p> <p>b. is supported by a full environmental impact assessment study;</p> <p>c. has been approved by the agency;</p>	<p>(a) The Committee observed that the Bill related to provision of affordable housing and noted that amendments were being made to include aspects of design and maintenance. Therefore the aspects of sanitation would be subsumed within the requirements related to design.</p> <p>(b) The Committee observed that clause 40 of the Bill already provides for the conditions under which the Board may offtake</p>	<p>The Committee resolved to amend the purpose of the Fund to include design and maintenance aspects.</p> <p>The Committee further resolved that an amendment be made to provide guidelines to offtake affordable housing units.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>d. meets policy and statutory requirements on housing and sanitation standards; and</p> <p>e. meets any other criteria or conditions set by the agency.</p> <p>Rationale</p> <p>Section 32 of the Bill makes provision on off-taking of affordable housing units but fails to make specific reference to sanitation</p>	<p>affordable housing units under the scheme. However, the criteria for offtake envisaged under clause 40 (c) is not provided for.</p> <p>The Committee therefore noted that the same should be provided for under regulations.</p>	
<p>Clauses 33, 34, 35 And 36</p>	<p>Oraro & Company Advocates</p>	<p><u>Proposal</u></p> <p>The addition of the words“administrator of the” immediately before the word “Fund”.</p>	<p>The Committee observed that the CEO is the administrator of the Fund ,however under clause 15 (2)(a) states that the board is mandated to coordinate the</p>	<p>The Committee resolved to amend the clauses to clarify that it was the Board carrying out the functions.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p><u>Rationale</u></p> <p>a) Firstly, the Fund is not an entity established in the Bill to administer the Fund.</p> <p>b) Secondly, the chief executive officer is the entity established in the Bill to be the administrator of the fund as indicated in clauses 2 and 24 of the Bill.</p>	<p>optimal utilization of the fund in the implementation of affordable housing programs.</p> <p>Further the CEO under clause 24 (1)(e) implements the policies approved by the Board for the attainment of the objects of the fund. Therefore the CEO despite the Ceo being the administrator of the fund ,the CEO does not act independently.</p> <p>Consequently, references in 34,35 and 36 may be construed to refer to the Board and not the CEO.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 38 Eligibility Criteria</p>	<p>Oraro & Company Advocates</p>	<p><u>Proposal</u></p> <p>The Contributions from taxpayers and their employers, where applicable, should be considered as deposit and the funds should be utilized for purposes of allocation of a housing unit.</p> <p><u>Rationale</u></p> <p>The sole purpose for deduction of the levy is to enable development of affordable housing. In that case, persons should be allowed to assess how much contributions have been made towards affordable housing and use the funds as deposit or for allocation of houses. Inability to use their contributions will be deemed to be unfair, discriminatory, and unconscionable.</p>	<p>The Committee noted that the contributions are towards creation of the Fund to facilitate the attainment of the realisation of Article 43(1)(b) of the Constitution and therefore, the monies cannot be used as deposit.</p> <p>However, the voluntary contributions could be used as deposit.</p>	<p>The Committee rejected the proposal.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 38 Eligibility Criteria</p>	<p>State Department of Housing and Urban Development</p>	<p><u>Proposal</u> The eligibility criteria be moved to Regulations</p>	<p>The Committee accepted that the eligibility criteria should be contained in Regulations. It however noted that the Affordable Housing programme should only be available to natural persons and not body corporates and that in order to promote equity, an eligible persons will qualify for only one unit in their lifetimes.</p>	<p>The Committee accepted to move part of the eligibility criteria to Regulations.</p>
<p>Clause 38 & 39 Eligibility Criteria</p>	<p>KPMG Kenya Manufacturers Authority Cliffe Dekker Hofmeyr</p>	<p><u>Proposal</u> Clause 38 and 39 make reference to clauses that are no longer relate to the eligibility criteria.</p>	<p>The Committee noted that the Bill transmitted to the Senate contained cross-referencing errors and that the eligibility criteria was missing as it was deleted by the National Assembly.</p>	<p>The Committee accepted the proposal.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
	The Architects Alliance ('TAA') State Department of Housing and Urban Development		The Committee therefore resolved that the Bill be revised to clear up any cross-referencing errors and to provide for an eligibility criteria.	
Clause 38 Eligibility Criteria	KPMG	<p><u>Proposal</u></p> <p>Restrict beneficiaries to a single house for their lifetime and include an eligibility criterion that prioritizes:</p> <p>(i) low-income individuals and families; and</p> <p>(ii) first-time homebuyers.</p> <p><u>Rationale</u></p>	The Committee observed that the Fund seeks to ensure the achievement of Article 43(1)(b) by ensuring that Kenyans have access to accessible and adequate housing; therefore in order to promote equity, the Committee was of the view that one natural person should only be allowed to own one house	The Committee accepted the proposal.

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>If not done there is a likelihood of increasing the risk of individuals with higher incomes, who could potentially acquire multiple affordable homes exacerbating the social inequities that already existing in the country. These restrictions could help ensure that affordable housing is distributed more equitably among those who genuinely require an affordable unit.</p>	<p>under the Affordable Housing programme for their lifetimes.</p>	
<p>Clause 38</p>	<p>Cliffe Dekker Hofmeyr</p>	<p><u>Proposal</u> Amend the Bill so that the section reads- "A natural person shall be eligible to be allocated only one affordable housing unit if that person is a Kenyan citizen who is at least eighteen years of age and holds a</p>	<p>The Committee observed that the Fund seeks to ensure the achievement of Article 43(1)(b) by ensuring that Kenyans have access to accessible and adequate housing; therefore in order to promote equity, the</p>	<p>The Committee accepted the proposed amendment</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>valid Kenyan Identity Card."</p> <p><u>Rationale</u></p> <p>The proposed amendment seeks to limit the number of units to be purchased by one natural person. This will alleviate the risk of people using body corporates to purchase more than one unit and end up cheating the program.</p>	<p>Committee was of the view that one natural person should only be allowed to own one house under the Affordable Housing programme for their lifetimes.</p>	
<p>Clause 39</p> <p>Application for allocation of affordable housing unit.</p>	<p>Vincent Muiruri</p>	<p><u>Proposal</u></p> <p>Levy to form the part deposit required during allocation of houses.</p>	<p>The Committee noted that the contributions are towards creation of the Fund to facilitate the attainment of the realisation of Article 43(1)(b) of the Constitution and therefore, the monies cannot be used as deposit. However, the voluntary</p>	<p>The Committee rejected</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
			contributions could be used as deposit.	
<p>Clause 40(b) Off-taking of affordable housing units</p>	<p>Oraro & Company Advocates</p>	<p><u>Proposal</u> We propose that the policy and statutory requirements are listed in this clause.</p> <p><u>Rationale</u> This proposal enhances clarity by listing the policy and statutory requirements that have been omitted from this clause.</p>	<p>The Committee observed that the procedural guidelines in relation to the exercise of the power of the Board to offtake affordable housing units should ordinarily be contained in regulations.</p> <p>The Committee therefore directed that an amendment be made to clause 47 in this respect.</p>	<p>The Committee accepted this proposal.</p>
<p>Clause 41 Loan interest rate</p>	<p>Vincent Muiruri</p>	<p><u>Proposal</u></p>	<p>The Committee observed that the interest rate or administration fee for a loan issued under clause</p>	<p>The Committee rejected the proposal and instead recommended for the interest rate and</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		Define interest on loans to 3% and only available to contributors. This will encourage contribution.	41 would best be provided for under regulations. The Committee therefore directed that an amendment be made to clause 47 in this respect.	administration fee to be provided for in Regulations.
<p>Clause 44 Misappropriation of the funds of funds</p>	<p>Cliffe Dekker Hofmeyr</p>	<p><u>Proposal</u></p> <p>Amend section 44 (2) to read- "A person who contravenes the provisions of subsection (1) shall be liable, on conviction- (a) to a fine not exceeding twenty million shillings or imprisonment of a term not exceeding ten years, or to both."</p> <p><u>Rationale</u></p> <p>A heavy sanction will deter perpetrators from committing the offences.</p>	<p>The Committee agreed with the stakeholder that it was important to deter any impropriety or misappropriations related to the Fund whose intention is to ensure the right to housing under Article 43(1)(b) of the Constitution.</p> <p>The Committee therefore proposed the doubling of the fine and the doubling of the prison term.</p>	<p>The Committee accepted the proposal.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
<p>Clause 47 Regulations</p>	<p>Cliffe Dekker Hofmeyr</p>	<p><u>Proposal</u> Delete section 47 (2) (b) .</p> <p><u>Rationale</u> The proposed amendment seeks to give life to the proposal above which proposes deletion of section 39(2) (a) that requires a deposit, prescribed by the Cabinet Secretary, to be placed before a house can be purchased."</p>	<p>The Committee noted that the contributions are towards creation of the Fund to facilitate the attainment of the realisation of Article 43(1)(b) of the Constitution and therefore, the monies cannot be used as deposit. The Committee therefore retained the requirement for regulations to be developed in respect to the requisite deposit.</p>	<p>The Committee rejected the proposal</p>
<p>Clause 49(1) Revocation of affordable housing fund regulations</p>	<p>Oraro & Company Advocates</p>	<p><u>Proposal</u> We propose the addition of the word "before" appearing after the word "immediately".</p> <p><u>Rationale</u></p>	<p>The Committee noted that the amendment will clarify the provision.</p>	<p>The Committee accepted the proposal</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		This proposal seeks to correct the omission present in this sub-clause.		
Interpretation	Cliffe Dekker Hofmeyr	<p><u>Proposal</u></p> <p>The introduction of the following words- (a) "means testing" means a method that uses the Means Testing Instrument to determine the mode of calculation of the gross income of a person. (b) "means testing instrument" means a set of indicators that capture various economic aspects of an individual for purposes of conducting a means testing;</p> <p><u>Justification</u></p>	The Committee observed that KRA is mandated to collect taxes across different income categories and therefore, there already is a system in place that determines the taxable incomes of non-salaried persons.	The Committee rejected the proposal.

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		The purpose of this introduction is to bring clarity to the meaning of the words being introduced.		
New Clause	Vincent Muiruri	The levy to be introduced as part VAT which will cover most Kenyans.	The Committee observed that the primary purpose of the Bill is to introduce a levy.	The Committee rejected the proposal.
New Clause	KPMG	<p><u>Proposal</u></p> <p>Inclusion of incentives.</p> <p>The Bill should include tax incentives to encourage corporations to provide a gift or donation under Section 9 of the Bill.</p> <p><u>Rationale</u></p> <p>By offering reduced tax liabilities or credits, governments can stimulate greater</p>	<p>The Committee observed that clause 5(2)(b) already exempts any person who complies with the requirements of clause 5 from paying the levy in clause 4(2)(b).</p> <p>In addition, the Committee observed that the purpose of the Levy is to increase the Funds available to realize the</p>	The Committee rejected the proposal.

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		participation and support for housing initiatives.	provisions of Article 43(1)(b) of the Constitution and the inclusion of a tax incentive would jeopardize this noble cause.	
New Clause	Peter Kimei	<p>Being a national housing Bill, I urge the Senate to consider including an amendment for the fund to:</p> <p>i. Support every Kenyan who starts to build their own houses for own use (not for commercial use) by:</p> <p>a. Paying for the plans of the house</p> <p>b. Paying all relevant fees for approval of the house plans</p> <p>c. Paying for inspections fee and cite supervision by accredited engineers</p>	The Committee takes note of the intent of the proposal and recommended that it be provided in Regulations by the Cabinet Secretary under the rural affordable housing scheme using voluntary contributions and land title as collateral or deposits.	The Committee rejected but has proposed an amendment to provide for rural affordable housing under clause 42 to allow persons who are unable to get an affordable housing unit to convert their voluntary contributions to collateral to access affordable mortgages to

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>d. Subsidise labour – government to pay 50% of casual labour costs at the sites</p> <p>e. Subsidise construction materials especially cement, iron sheets, nails and blocks.</p> <p>ii. Subsidise mortgage repayments to Kenyans with a mortgage with fixed monthly relief of Ksh. 5,000 on all mortgages</p> <p>iii. Control interest charged on new mortgages by commercial banks</p> <p><u>Rationale</u></p> <p>This proposal is aimed at encouraging all Kenyans who can afford to start own housing project. Additionally, the restriction on what units will be supported by the the government will ensure dignity,</p>		<p>build rural affordable housing units.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>quality and affordability is assured by aspiring homeowners. If this is adopted, this honourable senate should come up with mechanisms to ensure this is implemented. My proposal aims at having all Kenyans benefit from this housing fund thus making the tax</p>		
New clause	KPMG	<p><u>Proposal</u></p> <p>We propose that the Bill introduces property tax relief for individuals who are contributing to the levy. This can be achieved by providing subsidies for payments on land rates and land rent to homeowners who are already burdened</p>	<p>The Committee observed that the purpose of the Levy is to increase the Funds available to realize the provisions of Article 43(1)(b) of the Constitution and the inclusion of a property tax relief would jeopardize this noble cause.</p>	<p>The Committee rejected the proposed amendment.</p>

CLAUSE	STAKEHOLDER	PROPOSAL AND RATIONALE	COMMITTEE OBSERVATION	COMMITTEE DETERMINATION
		<p>with paying mortgages and property taxes, in addition to the housing levy.</p> <p><u>Rationale</u></p> <p>Many homeowners face significant financial burdens, including mortgage payments, property taxes, and now the housing levy.</p> <p>Introducing property tax relief helps alleviate this burden, especially for those struggling to make ends meet.</p>		

STAKEHOLDERS

K. Rosemary Wanjiku-Advocate of the High Court

Vincent Njoroge

Mr. John Wesley Makokha

Haki Yetu Organization

Peter Kimei

Oraro & Company Advocates
Dagoreti District Landowners
Mjengo Construction Workers Welfare Association
Vincent Ogero
Mbeere North Technical and Vocational College
Jua Kali Contractors-National Umbrella Organizations
Mr. Vincent Muiruri Njoroge
Jeremiah Nyagah Technical Institute
The Architects Alliance ('Taa')
The National Construction Authority
The Architectural Alliance of Kenya
Matatu Stage Welfare Association
Buxton Estate
Mutabarikiwa Harmony Company
National Congress of Pentecostal Churches
Denis Kirui
Pamoja Tutetee Haki
Cabinet Secretary for Lands, Public Works, Housing and Urban Development
Cliffe Dekker Hofmeyr (CDH)'S
Kenya National Human Rights Commission (KNHCR)
Kenya Bankers Association
KPMG Advisory Services Limited:

Kamukunji Jua Kali

Mwingi Bodaboda Operators Association

APPENDIX 3

National News

Row The parties yesterday appeared to pull in different directions on a day MPs unanimously adopted the Nadco report

Differences over opposition leader's office splits Azimio

Kalonzo's allies say he is best suited for the seat as he will be the Azimio flagbearer in 2027

BY MOSES NYAMORI AND JUSTUS OCHIENG'

Opposition affiliate parties are allegedly split on who should take over the office of the Official Leader of Opposition should Mr Raila Odinga succeed in his bid for the chairmanship of the African Union Commission (AUC).

The parties yesterday appeared to pull in different directions on a day the National Assembly unanimously adopted the National Dialogue Committee (Nadco) report. Allies of Wiper leader Kalonzo Musyoka told *Nation* he should automatically take up the slot in the event it is created before the 2027 General Election.

But Mr Odinga's Orange Democratic Movement (ODM), through Deputy Party Leader Wycliffe Oparanya, said the slot should be taken by the outfit with the largest number of MPs. The bickering seemed to rule



From left: DAP-K leader Eugene Wamalwa, Wiper's Kalonzo Musyoka and ex-Muranga County Governor Mwangi Wa Iria address journalists at the Jaramogi Odinga Foundation in Nairobi yesterday. BONFACE BOGITA/INAT-ION

out the chances of Narc Kenya leader Martha Karua — who was Mr Odinga's running mate in the 2022 race — taking up the slot since her party has no elected leaders. Some of the Azimio politicians said Ms Karua can take up one of the deputy slots. According to the Nadco report,

the seat will be taken up by the leader of the party/coalition of parties that garnered the second-greatest number of votes in the immediately preceding presidential elections. The holder of the office will have two deputies. Mr Oparanya suggested that he was ready to take up the slot since

ODM is the largest party in the Azimio la Umoja One Kenya Coalition Party. National Assembly Minority Leader Opiyo Wandayi is also eyeing the seat owing to his current position.

"The decision should be based on numbers in Parliament. You cannot lead a team if your party

The decision should be based on numbers in Parliament. You cannot lead a team if your party has no members in the two houses

Mr Wycliffe Oparanya



has no members in the two houses," said Mr Oparanya. Mr Musyoka's allies, led by Kitui Senator Erach Wambua and Kitui Central MP Makali Mulu, said Mr Musyoka should be the automatic pick for the slot, citing an alleged agreement that he would run on the coalition's ticket in the 2027 presidential election.

"It is not a rock science to know who should occupy it. Kalonzo will be best suited for the seat. It makes a lot of sense because he will be our flag bearer in the 2027 election," said Senator Wambua.

Similar remarks were made by Mr Mulu, who maintained that Mr Musyoka remains the automatic choice to take up the position. He said Ms Karua can serve as one of the deputies.

Yesterday, ODM, through its Secretary-General Edwin Sifuna, said Mr Odinga had not declared that

he plans to step down. "May it be noted that the person position... any previous... his local public... means the party... We suggest... for the narrow... chaired by the... said in a statement.

Even though Mr Odinga... ed that he will... for whoever... the holder of... the African Union... representative for... opponent post... a full in tray of... "Political leadership is also shared. Even if I'm... there are compet... around the ready... provide leadership... and Azimio," Mr Odinga... ly Review, a public... tion Media Group... With ODM having... party leaders in... former Mombasa... san Jobo, it is not... between them... party leader's... ODM National Chairman Mbadi has said that... Central Committee... vened, once Mr Odinga... from Germany... the future of the party

nyyamori@nations... nnyyamori@nations...

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | THIRD SESSION
THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At the sitting of the Senate held on Thursday, 22nd February, 2024, the Affordable Housing Bill, 2023 (National Assembly Bills No. 75 of 2023) was introduced in the Senate by way of First Reading and thereafter stood committed to the Standing Committee on Roads, Transportation and Housing.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committee now invites interested members of the public to submit any representations that they may have on the Bill by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P. O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to the email address roadstranshousingcomm.senate@parliament.go.ke, to be received on or before **Thursday, 29th February, 2024 at 5.00 p.m.**

The Bill may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.

REPUBLIC OF KENYA



PARLIAMENTARY SERVICE COMMISSION
PARLIAMENTARY JOINT SERVICES

PUBLIC PARTICIPATION ON THE PARLIAMENTARY SERVICE COMMISSION BUDGET PREPARATION FOR THE FY 2024/25 AND MEDIUM TERM PERIOD (2024/25-2026/27)

The Parliamentary Service Commission is finalizing preparation of the FY 2024/25 and medium term Budget Proposal. In compliance with the Constitutional requirement for public participation in all financial matter anchored under Article 201(a) as read together with section 37(5) (a) of the Public Finance Management Act (PFM) 2012, the Parliamentary Service Commission has prepared the Sector Report and 2024/25 - 2026/27 MTEI period budget proposals. The Legislative Sector Report for Medium Term Expenditure Framework (MTEF) period 2024/2025-2026/2027 can be downloaded from the parliamentary website: www.parliament.go.ke.

All Stakeholders are invited to submit written comments on the Parliamentary Service Commission's MTEF budget proposals to dg@parliament.go.ke or parliamentdfa@gmail.com by 5.00pm on Friday, 8th March 2024.

Director General, Parliamentary Joint Services,
Parliamentary Service Commission,
P.O. Box 41842 00100
NAIROBI

National News

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The bickering seemed to rule



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out the chances of Narc Kenya leader Martha Karua — who was Mr Odinga's running mate in the 2022 race — taking up the slot since her party has no elected leaders. Some of the Azimio politicians said Ms Karua can take up one of the deputy slots.

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Similar remarks were made by Mr Mulu, who maintained that Mr Musyoka remains the automatic choice to take up the position. He said Ms Karua can serve as one of the deputies.

Yesterday, ODM, through its Secretary-General Edwin Sifuna, said Mr Odinga had not declared that

he plans to quit politics. "May it go on record that Raila Odinga, in seeking the AUC chairperson position, has not made any pronouncements regarding his local political future, and remains the party leader of ODM. We urge our members not to fall for the narratives currently being churned by the media," Mr Sifuna said in a statement.

Even though Mr Odinga has stated that he will remain available for whoever needs his support, the holder of the position, unlike the African Union High Representative for Infrastructure Development post he initially held, has a full in-tray of expectations.

"Political leadership is always shared. Even if I'm not around, there are competent people around me ready to step in and provide leadership in both ODM and Azimio," Mr Odinga told *Weekly Review*, a publication of the *Nation* Media Group, in an interview.

With ODM having two deputy party leaders in Mr Oparanya and former Mombasa Governor Hassan Joho, it is not clear who between them would take up the party leader's post.

ODM National Chairman John Mbadia has said that the party's Central Committee will be convened, once Mr Odinga returns from Germany, to deliberate on the future of the party.

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REPUBLIC OF KENYA



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NAIROBI

APPENDIX 4

6th March, 2024

The Clerk of the Senate
Parliament Buildings
NAIROBI

**RE: COMMITTEE STAGE AMENDMENTS TO THE AFFORDABLE HOUSING BILL,
NATIONAL ASSEMBLY HOUSING BILL NO 75. OF 2023**

NOTICE is given that Sen. Karungo P. Thangwa, Chairperson, Senate Standing Committee on Roads, Transportation and Housing, intends to move the following amendments to the Affordable Housing Bill, National Assembly Bills No. 75 of 2023, at the Committee Stage—

TITLE

THAT the Bill be amended by deleting the Title and replacing therefore the following new title—
Rural and Urban Affordable Housing Act.

CLAUSE 1

THAT the Bill be amended by deleting the words “Affordable Housing Act ,2024” appearing immediately after the words “cited as the” and replacing therefor the following ne words “Rural and Urban Affordable Housing Act, 2024”

CLAUSE 5

THAT clause 5 of the Bill be amended in subsection (2) by deleting the words “business or company which” and substituting therefor the words “person who”.

CLAUSE 7

THAT clause 7 of the Bill be deleted and substituted with the following new clause—

Default on
payment of
amount of Levy.

7. Where an amount of the Levy remains unpaid after the date when it becomes due and payable by a person liable to remit the amount, a penalty equal to three per centum of the unpaid amount shall be due and payable for each month or part thereof that the amount remains unpaid and shall be summarily recovered as a civil debt for the person liable to remit the amount.

CLAUSE 9

THAT clause 9 of the Bill be amended –

- (a) in paragraph (d) by deleting the words “section 38” and substituting therefor the words “section 42”; and
- (b) by inserting the following new paragraph immediately after paragraph (e)—
 - (ea) loans approved by the Cabinet Secretary for the time being in charge of the National Treasury;

CLAUSE 10

THAT clause 10 of the Bill be amended –

- (a) in subclause (1) by deleting the word “development” appearing immediately after the words “funds for the” and substituting therefor the words “design, development and maintenance”;
- (b) in subclause (2) –
 - (i) by deleting the word “development of affordable housing schemes” appearing in paragraph (d) immediately after the words “facilitate the” and substituting therefor the words “design, development and maintenance of affordable housing schemes in all counties”;
 - (ii) by inserting the following new paragraph immediately after paragraph (g)—
 - (h) facilitate the provision of services to the projects under the management of the Fund.

CLAUSE 11

THAT clause 11 (4) of the Bill be amended—

- (a) in paragraph (a) by deleting the word “two” and substituting therefor the word “point five (0.5%)”;
- (b) by inserting the following new paragraph immediately after paragraph (b)—
 - (c) not less than point five percent (0.5%) of the monies to the county committees for the administration of the County Committees as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury.
- (c) by inserting the following new subsection immediately after subsection 4 –
 - (4A) The monies under subclause (4)(c) shall be appropriated as a conditional grant to county governments.

CLAUSE 12

THAT clause 12 of the Bill be amended in sub-clause (3) by deleting the words “National Assembly” and substituting therefor the word “Parliament”.

CLAUSE 13

THAT clause 13 of the Bill be amended in sub-clause (3) by deleting the words “the National Assembly for approval before disbursing funds out of the Fund” and substituting therefor the word “Parliament”.

CLAUSE 14

THAT clause 14 of the Bill be amended in sub-clause (3)—

- (a) by deleting the word “his” appearing in paragraph (b) and substituting therefor the word “their”;

- (b) by deleting the word “his” appearing in paragraph (c) and substituting therefor the word “their”;

CLAUSE 15

THAT clause 15 of the Bill be amended by inserting the following new paragraph immediately after paragraph (d)—

- (da) inspect and enforce compliance to this Act, guidelines and regulations set under the Act.

CLAUSE 16

THAT clause 16 of the Bill be amended—

- (a) in sub-clause (1) –

- (i) by deleting paragraph (b) and substituting therefor the following new paragraph—

- (b) has ten years’ experience in a senior management position in the public service or private sector; and

- (ii) by inserting the following new paragraph—

- (c) meets the requirements of Chapter Six of the Constitution.

- (b) in sub-clause (2) by deleting the words “other than as an *ex-officio* member” appearing immediately after the word “Board”.

CLAUSE 17

THAT clause 17 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “other than the *ex-officio* members” appearing immediately after the word “Board”;

- (b) in sub-clause (2)–

- (i) by deleting the words “other than an *ex-officio* member” appearing immediately after the word “Board” in the introductory sentence;

- (ii) by deleting the words “his or her” appearing in paragraph (d) and substituting therefor the word “their”; and

- (c) in sub-clause (3) by deleting the words “other than an *ex-officio* member” appearing immediately after the word “Board”.

CLAUSE 18

THAT clause 18 of the Bill be amended by deleting the words “other than an *ex-officio* member” appearing immediately after the word “member”.

CLAUSE 19

THAT clause 19 of the Bill be amended in sub-clause (1) by inserting the word “First” immediately after the words “accordance with the”

CLAUSE 23

THAT clause 23 of the Bill be amended—

- (a) in sub-clause (2) by inserting the following new paragraph—
 - (c) meets the requirements of Chapter Six of the Constitution; and
- (c) by inserting the following new sub-clause—
 - (3) The Chief Executive Officer shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.

CLAUSE 33

THAT clause 33 of the Bill be amended –

- (a) in sub-clause (1) by deleting the word “Fund” appearing immediately after the word “The” and substituting therefor the word “Board”.
- (b) in sub-clause (2) by deleting the word “Fund” appearing immediately after the words “Act, 2012, the” and substituting therefor the word “Board”.

CLAUSE 34

THAT clause 34 of the Bill be amended by deleting the word “Fund” and substituting therefor the word “Board”.

CLAUSE 35

THAT clause 35 of the Bill be amended by deleting the word “Fund” and substituting therefor the word “Board”.

CLAUSE 36

THAT clause 36 of the Bill be amended in sub-clause (1) by deleting the word “Fund” and substituting therefor the word “Board”.

CLAUSE 38

THAT clause 38 of the Bill be deleted and substituted with the following new clause—

Eligibility criteria. **38.** (1) A person is eligible for allocation of one affordable housing unit if the person meets the criteria prescribed in regulations.

(2) In this section, a person means a natural person.

CLAUSE 39

THAT clause 39 of the Bill be amended in subclause (1) by deleting the words “section 30” and substituting therefor the words “section 38”.

CLAUSE 40

THAT clause 40 of the Bill be amended by—

- (a) renumbering the current paragraph as subclause (1); and
- (b) by inserting the following new sub-clause—

(2) The Cabinet Secretary may in consultation with the Board issue regulations for the better carrying out of subsection (1).

CLAUSE 41

THAT clause 41 of the Bill be amended by deleting the words “where applicable”.

CLAUSE 42

THAT clause 42 of the Bill be amended by deleting sub-clause (4) and substituting therefor the following new sub-clauses—

(4) A person who has made a voluntary saving and has not been allocated an affordable housing unit—

- (a) may withdraw their savings by issuing ninety days’ written notice to the agency for refund with any accrued interest; or
- (b) may apply to the Board for approval of issuance of an affordable interest mortgage to develop a rural affordable housing unit;

(5) An application in sub-section (4) (b) will be accompanied by an agreement that the applicant agrees to have their saved deposits and the land upon which the unit is to be built to be used as collateral.

(6) Upon approval by the Board, the applicant shall cause a charge on the title in subsection (5) to be executed in favour of the Board.

CLAUSE 44

THAT clause 44 (2) of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

- (a) to a fine not exceeding twenty million shillings or imprisonment of a term not exceeding ten years, or both; and.

CLAUSE 45

THAT clause 45 of the Bill be amended in sub-clause (1) by deleting the words “he is” appearing in paragraph(b)(i) and substituting therefor the word “they are”.

CLAUSE 47

THAT clause 47 of the Bill be amended—

- (a) in sub-clause (2) by inserting the following new paragraphs—
 - (i) immediately after paragraph (a)—
 - (ab) criteria for eligibility of allocation of an affordable housing unit under section 38 after paragraph (a);
 - (ii) immediately after paragraph (i);
 - (j) the typology and dimensions for affordable housing units relative to the incomes of the individual applicants;
 - (k) the procedural guidelines for the Board to off-take affordable housing units under an affordable housing scheme;
 - (m) the interest rate or administration fee for a loan issued under section 41; and
 - (n) criteria for eligibility of allocation of a low interest mortgage under section 42.
- (b) by inserting the following new sub-clauses—
 - (3) The Cabinet Secretary shall table before Parliament, the regulations made under this section within thirty days of commencement of this Act.
 - (4) Regulations made under this section shall not take effect unless approved by a resolution passed by Parliament.
 - (5) If a House of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after submission to it for approval, the House shall be deemed to have approved those regulations.

CLAUSE 48

THAT clause 48 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3) –

(4) Any ongoing project or programme on affordable housing implemented pursuant to a commitment or obligation under subsection (3) shall be deemed to be a project or programme commenced under this Act.

CLAUSE 49

THAT clause 49 of the Bill be amended in sub-clause (1) by inserting the word “before” after the word “immediately”.

NEW CLAUSES

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

NEW CLAUSE 11A

Investments by the Board.

11A. The Board may, with the approval of the Cabinet Secretary in charge of Treasury, invest any income that is not immediately required.

NEW CLAUSE 11B

Borrowing by the Board.

11B. The Board may, with the approval of the Cabinet Secretary in charge of Treasury, borrow funds for the advancement of the objectives of the Act.

THAT the Bill be amended by inserting the following new clauses immediately after clause 31—

NEW CLAUSE 31A

PART III (A) —ROLE OF THE COUNTY GOVERNMENTS IN AFFORDABLE HOUSING

Establishment of County Rural and Urban Affordable Housing Committees.

31A. (1) There is established in every county, a County Rural and Urban Affordable Housing Committee.

(2) The County Committee shall consist of the following—
(a) a non-executive chairperson who shall be nominated by the county governor;

- (b) the County Executive Committee member responsible for matters relating to housing or their representative designated in writing;
 - (c) three other persons who shall be nominated by the county governor, of whom—
 - (i) one shall be a representative of a registered association of traders operating in the county;
 - (ii) one shall be a representative of a registered residential association; in the county;
 - (iii) one shall be a member of the public residing within the county; and
 - (d) the chief officer for the time being in charge of housing, who shall be an *ex-officio* member and the secretary to the County Committee.
- (3) A person nominated under subsection (2) (a) and subsection (2) (d), shall be vetted and approved by the county assembly.
- (4) In nominating a person as a member under subsection (2) (a) and subsection (2) (d), the county governor shall—
- (a) ensure that not more than two-thirds of the members are of the same gender;
 - (b) ensure that ethnic minorities within the county are adequately represented; and
 - (c) consider marginalized groups including youth and persons with disability.
- (5) The members of the Committee shall be appointed within thirty days of the commencement of this Act.

NEW CLAUSE 31B

Qualifications for appointment.

- 31B.** (1) A person qualifies to be appointed as the Chairperson of the County Committee if that person—
- (a) holds a degree from a university recognized in Kenya;
 - (b) has at least five years' experience in matters relating to housing, built environment, banking, or finance;
 - (c) has resided in the county for a period of not less than five years.; and
 - (d) meets the requirements of Chapter Six of the Constitution
- (2) A person qualifies to be appointed as a member of the County Committee, if the person—
- (a) meets the requirements of Chapter Six of the Constitution;

- (b) has not been convicted of a criminal offence which attracts imprisonment for a term not exceeding six months;
- (c) has not been adjudged bankrupt or entered into a composition or arrangement with the creditors of the person; and
- (d) is not disqualified under any other written law from appointment as such.

NEW CLAUSE 31C

Tenure of office.

31C. (1) The Chairperson and members of the County Committee, shall hold office for a term of three years and may be eligible for re-appointment for an additional final term of three years.

(2) Notwithstanding the provisions of subsection (1), a member of the County Committee may be removed from office if that person—

- (a) has been absent from three consecutive meetings of the Committee without justifiable cause or the written permission of the Chairperson;
- (b) is adjudged bankrupt or enters into a composition or arrangement with the creditors of the person;
- (c) is convicted of an offence involving anti-economic crimes or corruption;
- (d) becomes incapable of carrying out the functions of their office due to an infirmity of mind or body;
- (e) violates Chapter Six of the Constitution; or
- (f) fails to disclose any interest in a matter under consideration by the Committee as provided for under this Act.

NEW CLAUSE 31D

Remuneration of the County Committee members.

31D. The Chairperson and the members of the County Committee shall be paid such sitting allowances or other remuneration for expenses as recommended by the Salaries and Remuneration Commission.

NEW CLAUSE 31E

Conduct of affairs and business of the County Committee.

31E. (1) The conduct of affairs and business of the County Committee shall be in accordance with the First Schedule of this Act.

(2) Subject to subsection (1), the Committee may amend its own procedures for the better carrying out of its functions.

NEW CLAUSE 31F

Functions of the County Committee.

31F. (1) The County Committee shall—

- (a) in liaison with the Board, develop a framework for the attainment of affordable housing in the county;
- (b) advise the governor on affordable housing programmes within the county;
- (c) develop a five-year affordable housing investment programme for the county and annual housing investment programme for the county;
- (d) collaborate with the boards of cities and municipalities in developing plans for social and physical infrastructure related to affordable housing pursuant to section 21 of the Urban Areas and Cities Act;
- (e) make periodical written reports on the five-year affordable housing investment programme for the county and annual housing investment programme for the county to the Board;
- (f) to make annual reports to the county assembly on the implementation of affordable housing in the county; and
- (g) to perform such other duties as may be assigned by the county governor in writing.

Cap 303, Laws of Kenya.

NEW CLAUSE 31G

County legislation.

31G. Nothing in this Act shall preclude county governments from enacting legislation related to affordable housing in the counties.

FIRST SCHEDULE

THAT the First Schedule of the Bill be amended—

- (a) in paragraph 1 by deleting the words “at least half” appearing in sub-paragraph (4) and substituting therefor the word “majority”; and
- (b) in paragraph 2 by deleting the words “fifty plus one” and substituting therefor the words “majority”.

THIRD SCHEDULE

THAT the Third Schedule of the Bill be amended by inserting the following new paragraphs immediately in paragraph 5—

5A. National Construction Authority.

5B. State Department responsible for matters relating to Public Works.

CLAUSE 2

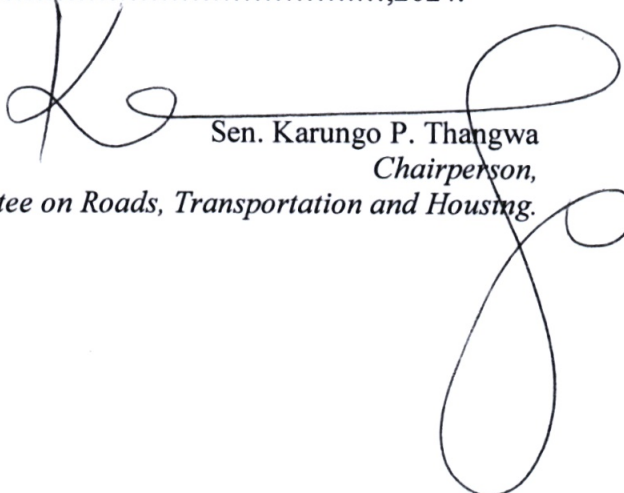
THAT clause 2 of the Bill be amended—

- (a) by deleting sub-clause (2) and inserting the following new sub-clause —

For purposes of this Act, “affordable housing unit” refers to —

- (a) a social housing unit means a house targeted to a person whose monthly income is below twenty thousand shillings;
 - (b) an affordable housing unit means a house targeted at a person whose monthly income is between twenty thousand and one hundred and forty-nine thousand shillings;
 - (c) affordable middle class housing unit means middle to high income housing targeted at persons whose monthly income is over one hundred and forty-nine thousand shillings; or
 - (d) rural affordable housing unit means a house under section 42 targeted at a person living in any area which is not an urban area.
- (b) by inserting the following new definition—
“County Committee” means the County Affordable Housing Committee established under Part IV of this Act;

Dated.....*7th March, 2024.*


Sen. Karungo P. Thangwa
Chairperson,
Standing Committee on Roads, Transportation and Housing.

APPENDIX 5

REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS
(Bill No.75 of 2023)

THE AFFORDABLE HOUSING BILL, 2023

(A Bill published in the Kenya Gazette Supplement No. 236 of 4th December, 2023
and passed by the National Assembly, with amendments, on 21st February, 2024)

THE AFFORDABLE HOUSING BILL, 2023
ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objects and guiding principles.

**PART II—IMPOSITION OF AFFORDABLE
HOUSING LEVY**

- 4—Imposition of Levy.
- 5—Obligation of an employer.
- 6—Exemption from imposition of the Levy.
- 7—Default on payment of amount of Levy.

**PART III—ESTABLISHMENT AND
MANAGEMENT OF THE AFFORDABLE HOUSING
FUND**

- 8—Establishment of Fund.
- 9—Sources of funds.
- 10—Purpose of the Fund.
- 11—Allocations out of the Fund.
- 12—Five-year affordable housing investment programme.
- 13—Annual investment programme
- 14—Establishment of Board.
- 15—Functions of the Board.
- 16—Qualifications for appointment.
- 17—Tenure of office.
- 18—Filling of vacancy.
- 19—Conduct of affairs and business of the Board.
- 20—Committees of the Board.
- 21—Disclosure of interest.

- 22—Remuneration of Board members.
- 23—Chief Executive Officer of the Board.
- 24—Administrator of the Fund.
- 25—Fund not to be overdrawn.
- 26—Administrative costs.
- 27—Power of administrator of the Fund to access information.
- 28—Corporation Secretary.
- 29—Staff of the Board.
- 30—Delegation of powers.
- 31—The common seal.

PART IV—IMPLEMENTATION OF THE AFFORDABLE HOUSING

- 32— Allocation of land.
- 33—Agreement with national government agency.
- 34—Agreement for institutional housing.
- 35—Agreement with private institutions
- 36—Agreement for financing.
- 37—Community support

PART V— ELIGIBILITY CRITERIA AND APPLICATION PROCEDURE FOR AFFORDABLE HOUSING UNIT

- 38—Eligibility criteria.
- 39—Application for allocation of affordable housing unit.
- 40—Off-taking of affordable housing units.
- 41—Loan interest rate.
- 42—Loan repayment.
- 43—Voluntary savings.

PART VI—FINANCIAL PROVISIONS

- 44—Accounts and audit.

PART VII— MISCELLANEOUS PROVISIONS

45—Offences.

46- Other offences

47—Protection from personal liability.

48—Regulations.

49—Consequential amendment and transition.

**FIRST SCHEDULE—CONDUCT OF AFFAIRS AND BUSINESS OF
THE BOARD**

SECOND SCHEDULE—CONSEQUENTIAL AMENDMENTS

**THIRD SCHEDULE – LIST OF AGENCIES IMPLEMENTING THE
AFFORDABLE HOUSING PROGRAMME AND PROJECTS**

THE AFFORDABLE HOUSING BILL, 2023

A Bill for

AN ACT of Parliament to give effect to Article 43(1)(b) of the Constitution; to provide a framework for development and access to affordable housing and institutional housing; and for connected purposes

ENACTED by Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Affordable Housing Act, 2024 and shall come into operation as follows— Short title.
- (a) on the date of assent, section 4 and 5;
 - (b) all other sections, on such date as may be prescribed by the Cabinet Secretary by notice in the *Gazette*.
2. (1) In this Act, unless the context otherwise requires— Interpretation.
- “agency” means an institution allocated monies for affordable housing under section 11;
- “administrator of the Fund” means the person designated as the administrator of the Fund under section 24;
- “affordable housing” means housing that is adequate and costs not more than thirty percent of the income of a person per month to rent or acquire;
- “affordable housing scheme” means the construction of affordable housing units including such other social amenity, infrastructure or services and the acquisition, laying out, subdivision and the development of land comprised within the area of the scheme necessary for social welfare and trading;
- “Board” means the Affordable Housing Board established under section 14;
- “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to affordable housing;

“Chief Executive Officer” means the person appointed as such under section 23;

“collector” means the Commissioner-General of the Kenya Revenue Authority, appointed under section 11(1) of the Kenya Revenue Authority Act;

Cap. 469.

“Fund” means the Affordable Housing Fund established under section 8;

“institutional housing” means housing that is adequate and affordable for public institutions such as universities, colleges, police, defence forces, government pool housing and prisons; and

“Levy” means the Affordable Housing Levy imposed under section 4.

(2) For the purposes of this Act, “affordable housing unit” refers to—

- (a) a social housing unit with a plinth area of at least eighteen square metres and targeted to a person whose monthly income is below twenty thousand shillings;
- (b) an affordable housing unit with a plinth area of at least thirty square metres and targeted at a person whose monthly income is between twenty thousand and one hundred and forty-nine thousand shillings; or
- (c) affordable middle class housing unit with a plinth area of at least eighty square metres for middle to high income housing targeted at persons whose monthly income is over one hundred and forty-nine thousand shillings.

3. (1) The objects of this Act shall be to—

- (a) give effect to Article 43(1)(b) of the Constitution on the right to accessible and adequate housing and to reasonable standards of sanitation;
- (b) impose a levy to facilitate the provision of affordable housing and institutional housing; and

Objects and guiding principles.

- (c) provide a legal framework for the implementation of the affordable housing programmes and projects and institutional housing.
- (2) The implementation of this Act shall be guided by—
 - (a) the national values and principles of governance under Article 10(2)(b) of the Constitution;
 - (b) the principles of public finance under Article 201 of the Constitution; and
 - (c) the values and principles of public service under Article 232 of the Constitution.

PART II—IMPOSITION OF AFFORDABLE HOUSING LEVY

4. (1) There is imposed a levy known as the Affordable Housing Levy. Imposition of Levy.

(2) The Levy shall be at the rate of one point five percent of—

- (a) the gross salary of an employee; or
- (b) the gross income of a person received or accrued which is not subject to the Levy under paragraph (a).

(3) The Levy shall be payable to the collector, for remittance into the Fund, not later than the ninth working day after the end of the month in which the gross salary was due or gross income was received or accrued.

5. (1) An employer shall—

Obligation of an employer.

- (a) deduct and remit the amount referred to in section 4(2)(a) from the gross salary of an employee; and
- (b) remit an amount equivalent to the amount deducted under section 4(2)(a), to the collector.

(2) Without prejudice to the generality of section 6, any business or company which complies with the provisions of section 5 shall not be liable to pay the levy under section 4(2) (b).

6. The Cabinet Secretary for the time being responsible for the National Treasury may, on the

Exemption from imposition of the Levy.

recommendation of the Cabinet Secretary, provide, by notice in the *Gazette*, that—

- (a) any income or class of income; or
- (b) any person or category of persons,

shall be exempt from the application of section 4 to the extent specified in the notice.

7. The levy shall be a debt due to the Government and shall be recoverable in accordance with the Tax Procedures Act, 2015.

Debt recovery.
No. 29 of 2015.

PART III—ESTABLISHMENT AND MANAGEMENT OF THE AFFORDABLE HOUSING FUND

8. There is established a fund to be known as the Affordable Housing Fund which shall be vested in, and managed by, the Board.

Establishment of
Fund.

9. (1) There shall be paid into the Fund—

Sources of funds.

- (a) monies deducted or payable as the Levy under this Act;
- (b) monies appropriated by the National Assembly for the purposes of the Fund;
- (c) gifts, grants or donations;
- (d) voluntary contributions made under section 38;
- (e) income from investments made by the Fund; and
- (f) income accruing to the Fund in the course of the performance of its functions under any written law.

(2) Without prejudice to the generality of subsection 1(e) and (f), all of the proceeds of sale, rent, and interest shall be paid into the Fund.

10. (1) The purpose of the Fund shall be to provide funds for the development of affordable housing, institutional housing and associated social and physical infrastructure.

Purpose of the
Fund.

(2) Without prejudice to the generality of subsection (1), the Fund shall—

- (a) facilitate the provision of funds for affordable housing and affordable housing schemes in the promotion of home ownership;
- (b) provide low interest loans or low monthly payment home loans, where applicable for the acquisition of affordable housing units within the approved affordable housing schemes;
- (c) facilitate the development of affordable housing schemes;
- (d) facilitate development of institutional housing units;
- (e) develop long term finance solutions for the development and off-take of affordable housing;
- (f) provide funds for maintenance of any land or building, estate or interest therein, for any of the purposes of the Fund; and
- (g) fund any other activities incidental to the furtherance of the objects of the Fund.

11. (1) The Board may allocate out of the Fund, monies for the—

Allocations out of the Fund.

- (a) development and off-take of affordable housing programmes and projects;
- (b) development of institutional housing; and
- (c) social and physical infrastructure.

(2) The monies may be allocated subject to the annual investment programme under section 13 and the provisions of Part IV to the agencies set out in the Third Schedule.

(3) The monies may be allocated to county governments in accordance with the Public Finance Management Act, 2012 and on such conditions as may be prescribed by the Cabinet Secretary for the time being responsible for the National Treasury.

(4) Despite the provisions of subsection (2), the Board shall allocate out of the Fund—

(a) up to two percent of the monies to the collector for the collection of the Levy as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury on the recommendation of the Cabinet Secretary; and

(b) up to two percent of the monies to the Board for the administration of the Fund as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury on the recommendation of the Cabinet Secretary.

(5) The Third Schedule may be amended by notice in the Gazette.

12. (1) The Board shall develop a five-year affordable housing investment programme every five years.

Five-year
affordable
housing
investment
programme.

(2) The Board shall submit the affordable housing investment programme referred to in subsection (1) to the Cabinet Secretary and the Cabinet Secretary for the time being responsible for the National Treasury for onward transmission to the Cabinet for approval.

(3) Upon approval of the affordable housing investment programme by the Cabinet, the Cabinet Secretary shall submit the approved affordable housing investment programme to the National Assembly.

13. (1) The Board shall prepare an annual investment programme drawn from the five-year affordable housing investment programme which shall include—

Annual
investment
programme.

- (a) the proposed affordable housing projects;
- (b) the proposed institutional housing projects;
- (c) the proposed allocation of monies out of the Fund;
- (d) the proposed implementing agencies as set out in the Third Schedule.

(2) The Board shall submit the annual investment programme referred to in subsection (1) to the Cabinet Secretary.

(3) The Cabinet Secretary shall submit the annual investment programme to the National Assembly for approval before disbursing funds out of the Fund.

14. (1) There is established a board to be known as the Affordable Housing Board.

Establishment of Board.

(2) The Board is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
 - (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; and
 - (c) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.
- (3) The Board shall consist of the following—
- (a) a non-executive Chairperson appointed by the President;
 - (b) the Principal Secretary to the National Treasury or his representative designated in writing;
 - (c) the Principal Secretary of the State Department for the time being responsible for matters relating to affordable housing or his representative designated in writing;
 - (d) three other persons who shall be appointed by the Cabinet Secretary, of whom—
 - (i) one shall be a nominee of the Council of County Governors;
 - (ii) one shall be a nominee of the Central Organization of Trade Union; and
 - (iii) one shall be a nominee of the Federation of Kenya Employers;
 - (e) three persons, not being public officers, appointed, through a competitive process, by the Cabinet Secretary and who shall possess

qualifications in built environment, finance or law; and

(f) the Chief Executive Officer, who shall have no right to vote at a meeting of the Board.

(4) In nominating a person to be a member under subsection (3)(d), the nominating bodies shall present the names of three persons to the Cabinet Secretary from amongst whom one shall be appointed.

(5) In appointing the members of the Board, the Cabinet Secretary shall—

(a) ensure that not more than two-thirds of the members are of the same gender;

(b) take into account regional balance;

(c) consider special and marginalized groups including youth, women and persons with disability.

(6) The members of the Board referred to in subsection (3), (a), (d) and (e) shall be appointed at different times so that the respective expiry dates of their terms of office shall be at different times.

15. (1) The object and purpose for which the Board is established is to oversee the development of affordable housing, institutional housing and associated social and physical infrastructure in Kenya

Functions of the Board.

(2) Without prejudice to the generality of subsection (1), the Board shall—

(a) co-ordinate the optimal utilisation of the Fund in the implementation of programmes and projects relating to the development of affordable housing and institutional housing and associated social and physical infrastructure;

(b) seek to achieve optimal efficiency and cost effectiveness in the development of affordable housing programmes and projects funded by the Fund;

- (c) based on a five-year affordable housing investment programme and annual affordable housing investment programme, determine the allocation of financial resources required for the development of the affordable housing projects, institutional housing and associated social and physical infrastructure;
- (d) manage the Fund and allocate monies in accordance with section 11;
- (e) monitor and evaluate, by means of technical, financial and performance audits, the delivery of goods, works and services funded by the Fund;
- (f) in implementing paragraph (e), pay due regard to public procurement and disposal regulations and additional guidelines issued or approved by the Cabinet Secretary for the time being responsible for the National Treasury;
- (g) identify, quantify and recommend to the Cabinet Secretary such other potential sources of revenue as may be available to the Fund for the development, of affordable housing programmes and projects and associated social and physical infrastructure for consideration by the Cabinet Secretary to the National Treasury;
- (h) approve the opening and closing of bank accounts of the Fund by the administrator of the Fund;
- (i) approve estimates of revenue and expenditure of the Fund for each financial year; and
- (j) perform such other duties as may be assigned by the Cabinet Secretary in writing.

16. (1) A person qualifies to be appointed as the Chairperson of the Board if that person—

Qualifications for appointment.

- (a) holds a degree from a university recognized in Kenya;
- (b) has experience in matters relating to housing, built environment, banking, finance or law.

(2) A person qualifies to be appointed as a member of the Board, other than as an *ex-officio* member, if the person—

- (a) meets the requirements of Chapter Six of the Constitution;
- (b) has not been convicted of a criminal offence which attracts imprisonment for a term not exceeding six months;
- (c) has not been adjudged bankrupt or entered into a composition or arrangement with the creditors of the person; and
- (d) is not disqualified under any other written law from appointment as such.

17. (1) The Chairperson and the members of the Board, other than the *ex-officio* members, shall hold office for a term of three years and may be eligible for re-appointment to a further and final term of three years.

Tenure of office.

(2) Despite the provisions of subsection (1), a member of the Board, other than an *ex-officio* member, may be removed from office if that person—

- (a) has been absent from three consecutive meetings of the Board without justifiable cause or the permission of the Chairperson;
- (b) is adjudged bankrupt or enters into a composition or arrangement with the creditors of the person;
- (c) is convicted of an offence involving dishonesty or corruption;
- (d) becomes incapable of carrying out the functions of his or her office, either arising from an infirmity of mind or body;
- (e) violates Chapter Six of the Constitution; or
- (f) fails to disclose any interest in a matter under consideration by the Board as provided for under section 19(1).

(3) A member of the Board, other than an *ex-officio* member, shall cease to be a member of the Board if that

member resigns from office by a notice in writing addressed to the appointing authority.

18. Whenever the office of the Chairperson or a member, other than an *ex-officio* member, becomes vacant before the expiry of the term of office, the appointing authority shall, on the recommendation of the nominating body, where applicable, appoint a person who holds a similar qualification to fill the vacant position for the remainder of the term.

Filling of vacancy.

19. (1) The conduct of affairs and business of the Board shall be in accordance with the Schedule.

Conduct of affairs and business of the Board.

(2) Subject to subsection (1), the Board may regulate its own procedures.

20. (1) The Board may establish such committees consisting of such members of the Board to deal with such matters as the Board may specify.

Committees of the Board.

(2) The Board may co-opt persons who are not members of the Board to committees established under subsection (1) for a particular reason and such persons shall serve in such committees for such period as the Board may determine.

21. (1) If a member of the Board is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter the member or the dependants of the member are directly or indirectly interested in a private capacity, the member shall, as soon as practicable, after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion, or vote on any question relating on such matter.

Disclosure of interest.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

(3) Failure to disclose such interest shall lead to the disqualification of the member from holding office as a member.

22. The Chairperson and the members of the Board shall be paid such sitting allowances or other remuneration for expenses as recommended by the Salaries and Remuneration Commission.

Remuneration of Board members.

23. (1) There shall be a Chief Executive Officer of the Board who shall be competitively recruited and appointed by the Board, in consultation with the Cabinet Secretary, on such terms and conditions of service as shall be specified in the instrument of appointment or otherwise in writing from time to time.

Chief Executive
Officer of the
Board.

(2) A person qualifies to be appointed as the Chief Executive Officer if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least ten years' experience in a managerial capacity in built environment, finance, or law.”

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

Administrator of
the Fund.

(2) The administrator of the Fund shall—

- (a) supervise and control the day-to-day administration of the Fund;
- (b) prepare the annual work plan for the Fund for approval by the Board;
- (c) open and operate the accounts of the Fund with the approval of the Board and the National Treasury;
- (d) prepare estimates of annual revenue and expenditure of the Fund and submit to the Board for approval;
- (e) implement policies approved by the Board for the attainment of the objects of the Fund;
- (f) advise the Board on matters relating to the administration of the Fund;
- (g) co-ordinate the monitoring and evaluation of affordable housing projects and programmes financed from the Fund;
- (h) keep books of accounts and other books and records in relation to the Fund of all activities and undertakings financed by the Fund;
- (i) be the custodian of the assets, property, and equipment of the Fund;

- (j) establish proper systems of internal control and management in accordance with provisions of the relevant laws;
- (k) subject to approval of the Board, authorise withdrawals out of the Fund;
- (l) ensure that money held in the Fund, including any earnings or accruals is spent only for the purpose for which the Fund is established
- (m) prepare, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and showing the expenditure incurred from the Fund in accordance with the Public Audit Act, 2015; and
- (n) undertake any other duty the Board may assign in furtherance of the objects and purpose of the Fund.

No. 34 of 2015.

25. The administrator of the Fund shall ensure that no bank accounts of the Fund are overdrawn.

Fund not to be overdrawn.

26. The administrative costs of the Fund shall not exceed two percent of the latest audited financial statement of the Fund.

Administrative costs.

27. The administrator of the Fund may access any programme and project related data that the Administrator considers necessary for the performance of their functions under this Act.

Power of the administrator of the Fund to access information.

28. (1) There shall be a Corporation Secretary to the Board who shall be competitively recruited and appointed by the Board.

Corporation Secretary.

(2) A person shall be qualified to be appointed as the Corporation Secretary if that person—

- (a) holds a degree from a university recognised in Kenya;
- (b) is a Certified Public Secretary and a member of the Institute of Certified Public Secretaries of Kenya in good standing;
- (c) has at least ten years' experience in offering the services of a certified public secretary; and

(d) meets the requirements of Chapter Six of the Constitution.

(3) The Corporation Secretary shall be responsible for—

(a) providing guidance to the members of the Board on their duties, responsibilities and powers and how these should be exercised in the best interests of the Board;

(b) ensuring that the procedures of the Board are followed and reviewed regularly, and that the members of the Board comply with written law;

(c) assisting the Chairperson of the Board to organise the activities of the Board, including providing information, preparing agenda, issuing notices and preparing for meetings, conducting evaluations of the Board and development programmes of the Board;

(d) providing secretarial services to the Board, including ensuring that the work plan of the Board is prepared and adhered to, circulating Board papers in advance of the meeting and keeping the record of attendance of the meetings;

(e) ensuring that the minutes of the meetings of the Board and committees of the Board are promptly prepared and circulated;

(f) keeping the members of the Board abreast of and informed on current governance practice;

(g) keeping a record of conflicts of interest declared by each member of the Board; and

(h) co-ordinating the governance audit process.

29. (1) The Board may appoint such members of staff as may be necessary for the proper discharge of the functions of the Board, on such terms and conditions of service as the Board may determine.

Staff of the Board.

(2) The staff of the Board shall be the secretariat of the Fund reporting to the Chief Executive Officer.

30. The Board may, by resolution generally or in any particular case, delegate to the administrator of the Fund, an officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of its functions under this Act or under any other written law.

Delegation of powers.

31. (1) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except by the order of the Board.

The common seal.

(2) The common seal of the Board shall, when affixed to a document and is duly authenticated, be judicially and officially noticed, and unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

PART IV—IMPLEMENTATION OF THE AFFORDABLE HOUSING

32. The provisions of the Land Act, 2012 shall apply with regard to allocation of national or county government land.

Allocation of land.

33. (1) The Fund may appoint a national government agency to develop affordable housing units and the associated social and physical infrastructure.

Agreement with national government agency.

(2) Subject to the Public Finance Management Act, 2012, the Fund may disburse such monies to the national government agency for the performance of the functions under sub-section (1).

34. The Fund may enter into an agreement with a public institution for—

Agreement for institutional housing.

- (a) the development of institutional housing units; and
- (b) the repayment of the monies paid out of the Fund for the development of the institutional housing units.

35. The Fund may enter into an agreement with a private institution to develop and construct affordable housing units and the associated social and physical infrastructure.

Agreement with private institutions.

36. (1) The Fund may enter into an agreement with any approved institution or mortgage scheme to provide financing for the off-take of affordable housing units.

Agreement for financing.

(2) Subject to the Public Finance management Act, 2012, the Fund may disburse such monies to the approved institution as may be necessary for the performance of the function under sub-section (1).

37. In the development of affordable housing units, the Board shall—

Community support.

- (a) as far as possible ensure locally available materials are used;
- (b) ensure labour is sourced from the local communities;
- (c) where a project is near a university or technical vocational institution ensure that the students get internships or practical experience from the projects where affordable housing projects are carried out.

PART V—ELIGIBILITY CRITERIA AND APPLICATION PROCEDURE FOR AFFORDABLE HOUSING UNIT

38. A person or body corporate shall be eligible to be allocated an affordable housing unit subject to the requirements under section 31.

Eligibility criteria.

39. (1) A person who meets the criteria set out under section 30 and desires to be allocated an affordable housing unit, shall make an application to the Board in the specified manner.

Application for allocation of affordable housing unit.

(2) An application made under subsection (1) shall be accompanied by—

- (a) proof of requisite deposit as may be prescribed by the Cabinet Secretary;
- (b) a copy of the national identity card or such other form of identification as may be prescribed by the Cabinet Secretary;
- (c) copy of incorporation certificate in the case of a body corporate;

- (d) a copy of Kenya Revenue Authority personal identification number certificate and tax compliance certificate; and
- (e) such other information as may be determined by the Board.

(3) In determining the allocation of an affordable housing unit under this section, the Board shall give preference to marginalised persons, vulnerable groups, youth, women and persons with disabilities.

40. The Board may off-take affordable housing units under an affordable housing scheme if the affordable housing scheme—

Off-taking of affordable housing units.

- (a) has been approved by the Board;
- (b) meets policy and statutory requirements; and
- (c) meets any other criteria or conditions set by the Board.

41. The interest rate or administration fee for a loan issued under this Act, where applicable, shall be payable on a reducing balance at such rate as may be prescribed by the Cabinet Secretary.

Loan interest rate.

42. (1) An eligible person may make voluntary savings with the Fund for purposes of raising a deposit towards the allocation of an affordable housing unit.

Voluntary savings.

(2) An administrator of the Fund shall open separate bank account where voluntary savings shall be kept and any interest arising from investment of voluntary savings shall be credited to this account.

(3) The administrator of the Fund shall issue an account number to each person making a voluntary saving.

(4) A person who has made a voluntary saving and has not been allocated an affordable housing unit and desires to withdraw his or her savings shall give a ninety-days' notice to the agency for refund with accrued interest, if any.

PART VI—FINANCIAL PROVISIONS

43. (1) The administrator of the Fund shall cause to be kept proper books and records of account of the income, expenditure and assets of the Fund.

Accounts and audit.

(2) Within a period of three months from the end of each financial year, the administrator of the Fund shall submit to the Auditor-General the accounts of the Fund together with—

- (a) a statement of the income and expenditure of the Fund during the year; and
- (b) a statement of the assets and liabilities of the Fund on the last day of that year.

(3) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act, 2015.

PART VII— MISCELLANEOUS PROVISIONS

44. (1) A person commits an offence if the person misappropriated any funds or assets of the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Act.

Misappropriation
of funds of the
Fund.

(2) A person who contravenes the provisions of subsection (1) shall be liable, on conviction—

- (a) to a fine not exceeding ten million shillings or imprisonment of a term not exceeding five years, or to both; and
- (b) an additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.

(3) The mandatory fine referred to in subsection (2)(b) shall be determined as follows—

- (a) the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (2)(b);
- (b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (2)(b), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.

45. (1) A person commits an offence if the person--

Other offences.

- (a) fails to give information or gives inaccurate or misleading information or falsifies information

or misrepresents information required under this Act;

(b) having possession of, or control over, or access to any documents, information, returns or forms relating to applications or granting of loans, communicates anything contained therein—

(i) to any person other than a person to whom he is authorized by the Board to communicate it; or

(ii) otherwise than for the purposes of this Act.

(2) A person who contravenes the provisions of subsection (1) shall be liable, on conviction to a fine not exceeding ten million shillings or imprisonment of a term not exceeding five years, or to both.

46. No matter or thing done by any person under this Act shall, if the matter or thing is done in good faith and in accordance with the law, render that person personally liable to any action, claim or demand whatsoever.

Protection from personal liability.

47. (1) The Cabinet Secretary may, in consultation with the Board, make Regulations for better carrying into effect the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the Regulations made under this section may prescribe—

- (a) the criteria for exemptions granted under section 6;
- (b) requisite deposit for the housing under section 39(2);
- (c) identification documents under section 39;
- (d) regulations under Part IV;
- (e) the criteria for change of affordable housing unit;
- (f) the provisions on voluntary savings;
- (g) the provisions relating to off-take of affordable housing units;
- (h) the inclusivity and diversity within affordable housing schemes; and

- (i) the application and integration of technology-based platforms in the administration and management of affordable housing schemes.

48. (1) The Acts specified in the First column of the second schedule are amended in the manner specified in the second column.

Consequential amendment and transition.

(2) Any payment made or action taken under the sections repealed under subsection (1) shall be deemed to have been paid or taken under this Act.

(3) Any commitment or obligation on the National government on affordable housing which have arisen or made in accordance with an Act of Parliament shall be deemed to be a commitment or obligation made under this Act.

49. (1) All regulations in force immediately the commencement of this Act and applicable to affordable housing and voluntary contributions are hereby revoked.

Revocation of affordable Housing Fund Regulations..

(2) All monies which immediately before the commencement of this Act, that were held by the National Housing Corporation under the Housing Fund Regulations, 2018 shall vest in the Fund and shall be deposited into the Fund.

(3) The National Housing Corporation shall account for and give a record of all contributions made under the Housing Fund Regulations, 2018.

(4) The administrator of the Fund shall notify the contributors and create an account for each contributor.

FIRST SCHEDULE

(s. 17(1))

CONDUCT OF AFFAIRS AND BUSINESS OF THE BOARD

1. (1) The Board shall meet not less than four times in every financial year and not more than four months shall

Meetings.

elapse between the date of one meeting and the date of the next meeting.

(2) The notice for a meeting of the Board shall be in writing, and shall be for a period of at least seven days from the expected day of the meeting.

(3) The Chairperson of the Board shall preside over all meetings of the Board and in the absence of the Chairperson, a person designated by members of the Board present at a meeting shall preside.

(4) The Chairperson of the Board may, on the written request made by at least half of the members of the Board and within seven days of the request, convene an extraordinary meeting of the Board at such time and place as the Chairperson may appoint.

(5) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

2. The quorum for the conduct of business at a meeting of the Board shall be fifty plus one of the total members of the Board.

Quorum.

3. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in the case of an equality of votes the Chairperson or person presiding shall have a casting vote.

Decisions of the Board.

SECOND SCHEDULE

(s. 43)

CONSEQUENTIAL AMENDMENTS

ACT	SECTION	AMENDMENTS
The Employment Act (No.11 of 2007)	S. 31B	Repeal
	s. 31C	Repeal
The Income Tax Act (Cap. 470)	s. 15 (2)	Insert the following new paragraph immediately after paragraph (g)- (ga) expenditure incurred by a person carrying on a business in payment of Affordable Housing Levy as provided under section 5 (b) of the Affordable Housing Act, 2024
	s. 30A	Insert the following subsection immediately after sub-section (1)- (1A) A resident individual who proves that in a year of income, the individual paid the affordable housing levy, shall for that year of income be entitled to the affordable housing relief
	Third Schedule, paragraph 9	Delete the word "three" and substitute therefor with the words one point five"
The Kenya Revenue Act (No.2 of 1995)	First Schedule , Part II	Insert the following paragraph immediately after paragraph 14;

The Affordable Housing Bill, 2023

“15.The Affordable Housing
Act,2024”

THIRD SCHEDULE

(s. 11)

LIST OF AGENCIES FOR IMPLEMENTING THE AFFORDABLE HOUSING PROGRAMMES AND PROJECTS

1. County governments.
2. National Housing Corporation.
3. The Kenya Slum Upgrading, Low-Cost Housing and Infrastructure Trust Fund established under the Government Financial Management (Kenya Slum Upgrading, Low-Cost Housing and Infrastructure Trust Fund) Regulations 2006.
4. State Department responsible for matters relating to affordable housing.
5. National Social Security Fund.
6. The private sector agencies as may be approved by the Board to support affordable housing and institutional housing.

Section 31B of No. 11 of 2007 which it is intended to repeal—

Affordable Housing
Levy.

31B. (1) Notwithstanding the provisions of section 3(2) (a), (b), (c) and (d) of the Act, each employee and employer shall pay a monthly levy to be known as the Affordable Housing Levy.

(2) The purpose of the Affordable Housing Levy shall be to provide funds for the development of affordable housing and associated social and physical infrastructure as well as the provision of affordable home financing to Kenyans.

(3) The Affordable Housing Levy shall not be used for any other purpose other than the development of affordable housing and associated social and physical infrastructure as well as the provision of affordable home financing to Kenyans.

(4) The monthly levy payable by the employer and employee shall be—

- (a) one point five per centum of the employee's gross monthly salary for the employee;
- (b) one point five per centum of the employee's monthly gross salary for the employer.

Section 31C of No. 11 of 2007 which it is intended to repeal—

Obligations of the
employer.

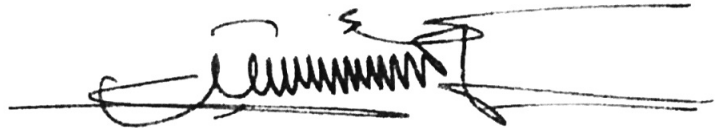
31C. (1) An employer shall—

- (a) deduct an employee's monthly payment from the employee's gross monthly salary;
- (b) set aside the employer's monthly payment for each employee; and
- (c) not later than nine working days after the end of the month in which the payments are due, remit an amount comprising the employee and the employer's payment.

(2) An employer who fails to comply with this section shall be liable to payment of a penalty equivalent to two per cent of the unpaid funds for every month the same remains unpaid.

The Affordable Housing Bill, 2023

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 21st February, 2024.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.

A handwritten signature in black ink, starting with a large 'W' and ending with a long horizontal stroke.




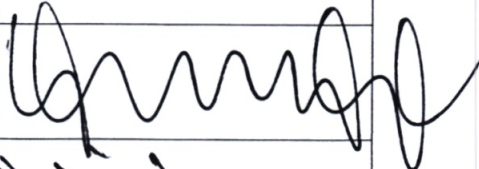

Speaker of the National Assembly

APPENDIX 6

Report Adoption

ADOPTION OF THE REPORT ON THE AFFORDABLE HOUSING BILL, 2023 (NATIONAL ASSEMBLY BILLS NO.75 OF 2023)

WE, THE UNDERSIGNED MEMBERS OF THE SENATE STANDING COMMITTEE ON ROADS, TRANSPORTATION AND HOUSING, DO HEREBY APPEND OUR SIGNATURE TO ADOPT THIS REPORT-

NAMES	DESIGNATION	SIGNATURE
Sen. Paul Karungo Thangwa, MP	Chairperson	
Sen. Peris Pesi Tobiko, CBS, MP	Vice-Chairperson	
Sen. Nderitu John Kinyua, MP	Member	
Sen. (Rtd) Justice Stewart Madzayo, CBS, MP	Member	
Sen. Wambua Enoch Kiio, MP	Member	
Sen. Dr. Lelegwe Steve Ltumbesi, MP	Member	
Sen. Chute Mohamed Said, MP	Member	
Sen. Kajwang' Moses Otieno, MP	Member	
Sen. Edwin Watinya Sifuna, MP	Member	

