

*Paper read by the
Vice Chair of the
De- Agri and
& CO-Operatives
28/04/2015
[Signature]*

Approved for tabling -

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION: 2015

THE DEPARTMENTAL COMMITTEE ON AGRICULTURE,
LIVESTOCK AND CO-OPERATIVES

REPORT ON THE MESSAGE FROM THE SENATE ON THE FERTILIZER
AND ANIMAL FOODSTUFFS (AMENDMENT) BILL 2013 (NATIONAL
ASSEMBLY BILL NO.36 OF 2013)

CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

APRIL, 2015

PREFACE

The Departmental Committee on Agriculture, Livestock and Co-operatives is established pursuant to provisions of Standing Order 216 (5). Under the provisions of Standing Order 216 (5) the Committee is mandated to:-

- (a) *study and review all legislation referred to it;*
- (b) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

The Committee is also mandated to scrutinize the budget of line Ministries and Departments as provided under Standing Order No. 235.

The Departmental Committee on Agriculture, Livestock and Co-operatives oversees the performance of the following Ministries and Government department:-

- (i) Agriculture,
- (ii) Livestock,
- (iii) Irrigation,
- (iv) Fisheries development,
- (v) Co-operatives development, and
- (vi) Production and marketing.

Under the above Ministries, the Committee covers the following subjects;

- (i) Agriculture policy
- (ii) Livestock policy and Fisheries policy
- (iii) Cooperative societies

Membership

The Committee comprises of the following Members:-

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|---|---------------|
| 1. The Hon. Adan Mohamed Nooru, MBS, M.P. - | Chairman |
| 2. The Hon. Japhet M. Kareke Mbiuki, M.P. - | Vice Chairman |
| 3. The Hon. Mary Wambui Munene, M.P. | |
| 4. The Hon. Kabando Wa Kabando, M.P. | |
| 5. The Hon. Raphael Letimalo, M.P. | |
| 6. The Hon. Patrick Wangamati, M.P. | |
| 7. The Hon. Francis Munyua Waititu, M.P. | |
| 8. The Hon. Peter Njuguna Gitau, M.P. | |
| 9. The Hon. Maison Leshoomo, M.P. | |
| 10. The Hon. Anthony Kimani Ichung'wah, M.P | |
| 11. The Hon. Alfred Kiptoo Keter, M.P. | |

12. The Hon. Ayub Savula Angatia, M.P.
13. The Hon. Justice Kemei, M.P.
14. The Hon. Philip L. R. Rotino, M.P.
15. The Hon. Korei Ole Lemein, M.P.
16. The Hon. Silas Tiren, M.P.
17. The Hon. Benjamin Jomo Washiali, M.p.
18. The Hon. (Dr.) Victor Kioko Munyaka, M.P.
19. The Hon. John Bomet Serut, M.P.
20. The Hon. Millie Odhiambo, M.P.
21. The Hon. Fredrick Outa, M.P.
22. The Hon. Maanzo, Daniel Kitonga, M.P.
23. The Hon. James Opiyo Wandayi, M.P.
24. The Hon. Ferdinand Kevin Wanyonyi, M.P.
25. The Hon. Paul Simba Arati, M.P.
26. The Hon. Florence Mwikali Mutua, M.P.
27. The Hon. Hezron Bollo Awiti, M.P.
28. The Hon. John Kobado, M.P.
29. The Hon. Zuleikha Hassan Juma, M.P.

Mr. Speaker,

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the support and services extended to the Members to enable the Committee complete this report smoothly.

I am grateful for the Members of the Committee whose support enabled the Committee to accomplish this task. Special thanks to the secretariat for their support at all times.

On behalf of the Departmental Committee on Agriculture, Livestock and Cooperatives and pursuant to Standing Order No. 227 (2) of the National Assembly, I now have the honor to present the Committee Report on the message from the Senate on the Fertilizer and Animal Foodstuffs (Amendment) Bill 2013(National Assembly Bill No.36 of 2013) to House for consideration

and adoption.

Thank You

Signed 

Hon. Adan Mohamed Nooru, MBS, M.P.

CHAIRMAN DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK
AND CO-OPERATIVE

DATE

27/4/15

CONSIDERATION OF THE SENATE MESSAGE ON THE FERTILIZER AND ANIMAL FOODSTUFFS (AMENDMENT) BILL 2013

2.0 INTRODUCTION

2.0.1 The Fertilizer and Animal Foodstuffs (Amendment) Bill 2013 was committed to the Senate on 19th June, 2014. The Senate passed the Bill with amendments on Tuesday, 17th February, 2015. The Amendments from the Senate were considered by the Committee during its Sitting on 23rd April, 2015.

3.0 AMENDMENTS BY THE SENATE

Clause 2

3.1 THAT clause 2 of the Bill be amended in sub clause (b) in the definition of the word "Board" by deleting the words "Fertilizer Board of Kenya" and substituting therefor the words "Fertilizer and Animal Foodstuffs Board of Kenya".

Clause 3

3.2 THAT clause 3 of the Bill be amended-

(a) In sub clause (1) of the proposed new section 2A by deleting the words "Fertilizer Board of Kenya" and substituting therefor the words "fertilizer and Animal Foodstuffs Board of Kenya".

(b) by deleting the proposed new section 2B and substituting therefor the following proposed new section-

Function of the
Board

2B. The functions of the Board shall be to—

(a) regulate the fertilizers and animal foodstuffs industry in Kenya including the Production, manufacture, packaging, importation and marketing of fertilizers and animal foodstuffs;

(b) regulate the importation of raw materials for the manufacture of animal food stuffs;

(c) promote the manufacture of fertilizers and animal foodstuffs in Kenya;

(d) advise the national and county governments on—

(i) the procurement, importation and efficient and timely distribution of subsidised fertilizers and animal foodstuffs;

(ii) establishment of retail outlets of fertilizers and animal foodstuffs in the counties; and

(iii) development of policies related to the manufacture and distribution of fertilizers and animal foodstuffs.

(e) inspect and test fertilizers and animal foodstuffs to ensure their quality and safety

(f) license manufactures, distributors and retailers of fertilizers and animal foodstuffs on the recommendation of the Director of Agriculture and the Director of Veterinary services;

(g) promote in collaboration with stakeholders in the agriculture industry, research on fertilizers and animal foodstuffs; and

(h) ensure that fertilizers and animal foodstuffs imported, manufactured or distributed in Kenya meet the standards of safety and quality as prescribed by law.

(c) in the proposed new paragraph 2C-

(i) in sub clause (1) by-

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

(ba) the principal Secretary in the Ministry for the time being responsible for livestock or a

designated alternate not being below the level of Deputy Secretary;

(b) deleting paragraph (e)

(c) deleting paragraph (f) and substituting therefor the following new paragraph-

(f) one person nominated by the Council of Governors;

(d) inserting the following new paragraphs after paragraph (f)-

(fa) the Director of Veterinary Services;

(fb) one person representing research institutions in the agriculture sector competitively sourced and appointed by the Cabinet Secretary;

(ii) by inserting the following new sub clauses immediately after (2)-

(2A) the Cabinet Secretary shall ensure that not more than one-third of the persons appointed under subsection (1) are of the same gender.

(2B) A person appointed under subsection (1) shall hold office for a period of three years and may be re-appointed for a further non-renewable term of three years.

(e) by inserting the following new clause immediately after clause 2M-

Annual report

2MA. (1) The Chief Executive Officer shall cause to be prepared an annual report setting out the activities of the Board

(2) The Chief Executive Officer shall submit the report referred to in subsection (1) to the Cabinet Secretary not later than two month after the end of each financial year.

(3) The Cabinet Secretary shall transmit copies of the report to the Senate and the National

Assembly within three month after receipt of the report.

Clause 10

3.3 THAT clause 10 of the Bill be deleted and substituted therefor by the following new clause;

10. section 16 of the principal act is amended by deleting the words "one thousand shillings or to an imprisonment for a term not exceeding one month and for a second or subsequent offence to a fine not exceeding three thousand shillings" and substituting therefor the words "five hundred thousand shillings or to imprisonment for a term not exceeding one month, and for a second or subsequent offence to a fine not exceeding one million shillings"

**4.0 COMMITTEE'S CONSIDERATION OF THE MESSAGE FROM THE SENATE
ON THE FERTILIZER AND ANIMAL FOODSTUFFS (AMENDMENT BILL,
2013)**

The Committee deliberated on the message from the Senate as follows:

- Clause 2 - Agreed to
- Clause 3 - Proposed amendment
- Clause 10 - Proposed amendment

5.0 COMMITTEE RECOMMENDATIONS ON THE SENATE AMMENDMENTS TO THE FERTILIZER AND ANIMAL FOODSTUFFS (AMENDMENT) BILL, 2013

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

1. Clause (2)

Proposed amendment to clause 2 agreed to.

Justification

The amendment provides for change of the name of the Board from "Fertilizer Board of Kenya" to "Fertilizer and Animal Foodstuffs Board of Kenya", the amendment is justifiable since the amendment Bill is dealing with the both fertilizer and animal foodstuffs.

2. Clause (3)

- (a) In sub clause (1) of the proposed new section 2A by deleting the words "Fertilizer Board of Kenya" and substituting therefor the words "fertilizer and Animal Foodstuffs Board of Kenya".
Proposed amendment to Clause 3 sub clause (1) agreed to.

Justification

For Consistency purposes.

- (b) Proposed amendment to the new section 2B agreed to.

Justification

The Agriculture sector is largely devolved but the National government is charged with policy making and hence it is expected that the Board shall provide advisory services to the National government and County government on Fertilizers and Animal Food Stuffs.

- (c) Proposed amendment the proposed section 2C agreed to with the following amendments:

- (i) In the proposed section 2C sub clause 1—

- (a) by inserting the following new paragraph immediately after paragraph
(b)

3. Clause (10)

Proposed amendment to clause 10 agreed to with amendments

It seeks to amend the proposed clause 10 by

(a) deleting the words "one month" appearing immediately after the words "not exceeding" and substituting therefor the word "one year"

(b) adding the words " or two years imprisonment or both" appearing immediately after the words "shillings"

Justification

The Senate proposal seeks to enhance the sentence to five hundred thousand shillings however the same is not in sync with the sentence hence the amendment to the non-custodial sentence and the sentence for a subsequent offence.

(ba) the principal Secretary in the Ministry for the time being responsible for livestock or a designated alternate not being below the level of Deputy Secretary;

Justification

The Act covers animal food stuff hence its important the Principal Secretary State department of Livestock is a member of the Board

- (b) by retaining the Attorney General or his representative in the Board
- (c) by retaining one nominee of the Council of Governors on the Board
- (d) by deleting the proposed paragraph (fa).

Justification

The Senate proposal deletes the provision for the Attorney General or his representative to sit on the Board of the Authority and instead provides for a person nominated by the Council of County Governors; this places the Attorney General or his representative with the representative of the Council of Governors therefore inadvertently placing the role of the representative of the Council of Governors at the same level as the legal advisory role the Attorney General plays, which is not the case.

The Committee was of the opinion that the Fertilizer and Animal Foodstuffs Board is a national body mandated to perform functions that are vested in the National Government in accordance with the Act and in line with the Fourth Schedule to the Constitution. The Committee therefore reinstates the Attorney General or his representative in the Board and one nominee of the Council of Governors.

Further the Director of Veterinary Services is an officer at the Ministry responsible for agriculture which had already been given membership in the Board vide the position of the Principal Secretary in the Ministry responsible for Agriculture or his/her representative.

- (ii) In the proposed section 2C sub clause 2—

Proposed amendment was agreed to with amendments on numbering; substitute 2A and 2B with (3) and (4) respectively

Justification

Proper sequencing of sub clauses.

