

Paper Laid

*By the Hon. Benjamin
Lengua, ^{MP} Chairman,
Finance, Planning &
Trade Committee, on
Tuesday, 26th May,
2015, at 2.30 pm.
*[Signature]**

REPUBLIC OF KENYA

PARLIAMENT
OF KENYA
LIBRARY



KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

REPORT ON

ITS CONSIDERATION OF THE SENATE AMENDMENTS TO THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL, 2014 AND THE PUBLIC AUDIT BILL, 2014.



PARLIAMENT BUILDINGS

NAIROBI

MAY, 2015

1.3. Consideration of the amendments

In the morning sitting of 26th May, 2015, the Deputy Speaker communicated a message from the Senate with regard to Passage of the Public Procurement and Asset Disposal Bill, 2014 and the Public Audit Bill, 2014 with amendments. She informed House that the Senate was seeking for the National Assembly's concurrence of the said amendments.

Considering that the two Bills had a constitutional deadline of 27th May, 2015, she directed the Departmental Committee on Finance, Planning & Trade to consider the senate amendments and present its report to the House in the same afternoon. The Committee met as directed and considered the amendments as follows:

(a) The Public Procurement and Asset Disposal Bill, 2014

The Bill has 184 of clauses out of which the Senate amended only 5 clauses (clauses 33, 51, 124, 165 and 176). The Committee concurred with all the senate amendments as indicated below:

Clause 33

THAT clause 33 be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (f)-

(fa)promote preference and reservation schemes for residents of the county to ensure a minimum of twenty percent in public procurement at the county.

Committee concurred: This is giving preferences to residents of the relevant counties in procurement thus promoting devolution.

Clause 51

THAT clause 51 be amended in sub-clause (3) by deleting the words "and licensed" appearing immediately after the words "agents registered".

Committee concurred: this amendment will not change anything.

Clause 124

THAT clause 124 be amended by inserting the following new sub-clause immediately after sub-clause (3)-

(3A) In evaluation of tenders by public entities, the financial and technical capability of the tenderers shall be given equal weight.

Committee concurred

Clause 165

THAT clause 165 be amended in sub-clause (1) by deleting paragraph (d).

Committee concurred.

1.0 PREFACE

1.1. Committee Mandate

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

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

1.2. Committee Membership

The Committee comprises of the following members:-

- | | |
|---|----------------------------------|
| 1. Hon. Benjamin Langat, MP (Chairman) | 15. Hon. Tiras N. Ngahu, MP |
| 2. Hon. Nelson Gaichuhie, MP (Vice Chairman) | 16. Hon. Sakaja Johnson, MP |
| 3. Hon. Jones M Mlolwa, MP | 17. Hon. Jimmy Nuru Angwenyi, MP |
| 4. Hon. Anyanga, Andrew Toboso, MP | 18. Hon. Ronald Tonui, MP |
| 5. Hon. Timothy M .E. Bosire, MP | 19. Hon. Mary Emase, MP |
| 6. Hon. Shakeel Shabbir Ahmed, MP | 20. Hon. Joseph Limo, MP |
| 7. Hon. Joash Olum, MP | 21. Hon. Lati Lelelit, MP |
| 8. Hon. Dr. Oburu Oginga, MP | 22. Hon. Kirwa Stephen Bitok, MP |
| 9. Hon. Patrick Makau King'ola, MP | 23. Hon. Sammy Mwaita, MP |
| 10. Hon. Abdullswamad Sheriff, MP | 24. Hon. Daniel E. Nanok, MP |
| 11. Hon. Sumra Irshadali, MP | 25. Hon. Eng. Shadrack Manga, MP |
| 12. Hon. Ogendo Rose Nyamunga, MP | 26. Hon. Abdul Rahim Dawood, MP |
| 13. Hon. Iringo Cyprian Kubai, MP | 27. Hon. Sakwa John Bunyasi, MP |
| 14. Hon. Dennis Waweru, MP | 28. Hon. Alfred W. Sambu, MP |
| | 29. Hon. Sammy Koech, MP |

Clause 176

THAT clause 176 of the Bill be amended by-

(a) inserting the following new sub clauses immediately after sub clause (4)-

(5) A procuring entity may lodge a complaint with the relevant professional body for the institution of disciplinary proceedings against a contractor who is a member of a professional body and who contravenes the provisions of this Act.

(6) The penalties imposed by a professional body pursuant to a complaint lodged under subsection (5) shall apply in addition to any penalties that may be imposed under this Act.

Committee concurred: this is an improvement (promotes professionalism)

(b) Public Audit Bill, 2014

The Bill has a total of 71 clauses out of which the Senate proposed amendments to 9 clauses (5, 11, 19, 24, 26, 32, 39, 40 and 41). The Committee considered the said amendments and resolved as indicated below:

Clause 5

THAT clause 5 be amended in-

(a) paragraph (b) by deleting the words “Article 229” appearing immediately after the words “specified in” and substituting therefor the words “Article 229(2)”; and

Committee concurred: specifying the article

(b) paragraph(c) by inserting the words “post graduate” immediately after the words “holds a”.

Committee rejected: the constitution is clear on the qualifications

Clause 11

THAT clause 11 be amended by inserting the following new sub-clause immediately after sub-clause (5)-

(5A) The members of the selection panel appointed under subsection (5) shall elect a chairperson from among themselves.

Committee rejected: the amendment excludes the

Clause 19

THAT clause 19 be amended in sub-section (2) by deleting the words “review and” appearing immediately after the words “each year for” at the end of the paragraph.

Committee rejected: the National Treasury should be allowed to do fiscal consolidation since it's the only government body that is in charge of the economy.

Clause 24

THAT clause 24 be amended in-

- (a) paragraph (a) of sub-section (1), by inserting the words “who shall be the chairperson” at the end of the paragraph; and
- (b) sub-section (3) by deleting the words “shall appoint a chairperson from among the persons under subsection (1) above and” appearing immediately after the words “the Auditor-General”.

Committee rejected: the Auditor General cannot be part of the Committee that will be advising him.

Clause 26

THAT the Bill be amended by deleting clause 26 and substituting therefor the following new clause

Functions of the Audit Advisory Board 26. (1) Subject to section 10, the principal function of the Audit Advisory Board shall, be to advise the Auditor- General on the exercise of his or her powers and the performance of his or her functions under the Constitution and this Act.

(2) Subject to the generality of subsection(1) the Board shall, in addition to any other function that may be conferred by this Act or any other law, advise the Auditor- General on--

- (a) the recruitment of senior managers in the office of the Auditor-General;
- (b) the development and review of organizational development issues;
- (c) the budget estimates and plans of the office of the Auditor-General;
- (d) the remuneration and other terms of appointment of the staff of the Office of the Auditor General in consultation with the Salaries and Remuneration Commission; and
- (e) any other matter that the Auditor-General may refer to the Board from time to time.

Committee concurred.

Clause 32

THAT clause 32 be amended in sub-clause (1) by deleting the word “may” appearing immediately after the words “public entity” and substituting therefor the word “shall”.

Committee rejected: this is already provided under clause 32(2)

Clause 39

THAT clause 39 be amended-

- (a) by deleting sub-clause (1); and
- (b) by deleting sub-clause (2) and substituting therefor with the following new sub-clause-
(2) Sections of the audit reports on national security organs may remain confidential to the Auditor-General but may, on demand, be submitted to Parliament.

Committee rejected

Clause 40

THAT clause 40 be amended in sub-clause (2) by deleting the words “ Article 206 (1) (b)” appearing immediately after the words “accordance with” and substituting therefor the words “ Article 206) 1)”

Committee concurred.

Clause 41

THAT clause 41 be amended in paragraph (e) of sub-clause (2), by inserting the words “including statements on processes and systems audit” immediately after the words “of the Auditor General”

Committee concurred.

Signed.....  Date..... 26-05-2015

(HON. BENJAMIN LANGAT, MP)

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

**MINUTES OF THE 35TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE,
PLANNING & TRADE HELD ON TUESDAY 26TH MAY, 2015 IN COMMITTEE ROOM 9,
MAIN PARLIAMENT HOUSE, AT 10.30:00AM**

Present

1. Hon. Benjamin Langat, MP (**Chairperson**)
2. Hon. Nelson Gaichuhie, MP(**ViceChairperson**)
3. Hon. Dr. Oburu Oginga, MP
4. Hon. Jimmy Nuru Angwenyi, MP
5. Hon. Sammy Mwaita, MP
6. Hon. Tiras Ngahu, MP
7. Hon. Kirwa Stephen Bitok, MP
8. Hon. Abdul Rahim Dawood ,MP
9. Hon. Ronald Tonui, MP
10. Hon. Sakaja Johnson, MP
11. Hon. Sakwa John Bunyasi, MP
12. Hon. Daniel Epuyo Nanok, MP
13. Hon. Mary Emase, MP
14. Hon. Lati Lelelit, MP
15. Hon. Iringo Cyprian Kubai, MP
16. Hon. Joseph Limo, MP
17. Hon. Patrick Makau King'ola, MP

Apologies

1. Hon. Eng. Shadrack Manga, MP
2. Hon. Jones Mlolwa, MP
3. Hon. Joash Olum, MP
4. Hon. Timothy Bosire, MP
5. Hon. Shakeel Shabbir Ahmed, MP
6. Hon. Sammy Koech, MP
7. Hon. Ogendo Rose Nyamunga, MP
8. Hon. Anyanga Andrew Toboso, MP
9. Hon. Abdullswamad Shariff, MP
10. Hon. Dennis Waweru, MP
11. Hon. Alfred Sambu, MP
12. Hon. Sumra Irshadali, MP

IN ATTENDANCE

- | | |
|-------------------------|-----------------------------|
| 1. Mr. Robert Nyaga | Parliamentary Budget Office |
| 2. Mr. Evans Oanda | First Clerk Assistant |
| 3. Mr. Nicodemus Maluki | Third Clerk Assistant |
| 4. Ms. Doreen Karani | Legal Counsel |
| 5. Eric Ososi | Research Officer |

MIN.NO. DCF/152/2015: PRELIMINARIES

The Chairperson called the meeting to order at 11.00am followed by a word of prayer from Mr. Nicodemus K. Maluki

MIN.NO.DCF/153 /2015: CONSIDERATION AND ADOPTION OF SENATE AMENDMENTS TO PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL, 2014

The Committee considered the Senate amendments to the Public Procurement and Asset Disposal Bill, 2014 as follows.

CLAUSE 33

THAT clause 33 be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (f)-

(fa)promote preference and reservation schemes for residents of the county to ensure a minimum of twenty percent in public procurement at the county.

Agreed

CLAUSE 51

THAT clause 51 be amended in sub-clause (3) by deleting the words “and licensed” appearing immediately after the words “agents registered”.

Agreed

CLAUSE 124

THAT clause 124 be amended by inserting the following new sub-clause immediately after sub-clause (3)-

(3A) In evaluation of tenders by public entities, the financial and technical capability of the tenderers shall be given equal weight.

Agreed

CLAUSE 165

THAT clause 165 be amended in sub-clause (1) by deleting paragraph (d).

Agreed

CLAUSE 176

THAT clause 176 of the Bill be amended by-

- (a) inserting the following new sub clauses immediately after sub clause (4)-

(5) A procuring entity may lodge a complaint with the relevant professional body for the institution of disciplinary proceedings against a contractor who is a member of a professional body and who contravenes the provisions of this Act.

(6) The penalties imposed by a professional body pursuant to a complaint lodged under subsection (5) shall apply in addition to any penalties that may be imposed under this Act.

Agreed

MIN.NO.DCF/154 /2015: CONSIDERATION AND ADOPTION OF SENATE AMENDMENTS TO PUBLIC AUDIT BILL, 2014

The Committee considered the Senate amendments to the Public Audit Bill, 2014 as follows.

CLAUSE 5

THAT clause 5 be amended in-

- (a) paragraph (b) by deleting the words “Article 229” appearing immediately after the words “specified in” and substituting therefor the words “Article 229(2)”; and

Agreed to

- (b) paragraph(c) by inserting the words “post graduate” immediately after the words “holds a”.

Rejected

CLAUSE 11

THAT clause 11 be amended by inserting the following new sub-clause immediately after sub-clause (5)-

(5A) The members of the selection panel appointed under subsection (5) shall elect a chairperson from among themselves.

Rejected

CLAUSE 19

THAT clause 19 be amended in sub-section (2) by deleting the words “review and” appearing immediately after the words “each year for” at the end of the paragraph.

Rejected

CLAUSE 24

THAT clause 24 be amended in-

- (a) paragraph (a) of sub-section (1), by inserting the words “who shall be the chairperson” at the end of the paragraph; and
- (b) sub-section (3) by deleting the words “shall appoint a chairperson from among the persons under subsection (1) above and” appearing immediately after the words “the Auditor-General”.

Rejected

CLAUSE 26

THAT the Bill be amended by deleting clause 26 and substituting therefor the following new clause-

Functions of the Audit
Advisory Board

26. (1) Subject to section 10, the principal function of the Audit Advisory Board shall, be to advise the Auditor- General on the exercise of his or her powers and the performance of his or her functions under the Constitution and this Act.

(2) Subject to the generality of subsection(1) the Board shall, in addition to any other function that may be conferred by this Act or any other law, advise the Auditor- General on—

- (a) the recruitment of senior managers in the office of the Auditor-General;
- (b) the development and review of organizational development issues;
- (c) the budget estimates and plans of the office of the Auditor-General;
- (d) the remuneration and other terms of appointment of the staff of the Office of the Auditor General in consultation with the Salaries and Remuneration Commission; and
- (e) any other matter that the Auditor-General may refer to the Board from time to time.

Agreed

CLAUSE 32

THAT clause 32 be amended in sub-clause (1) by deleting the word “may” appearing immediately after the words “public entity” and substituting therefor the word “shall”.

Rejected

CLAUSE 39

THAT clause 39 be amended-

- (a) by deleting sub-clause (1); and
- (b) by deleting sub-clause (2) and substituting therefor with the following new sub-clause-
(2) Sections of the audit reports on national security organs may remain confidential to the Auditor-General but may, on demand, be submitted to parliament; and
- (c) by deleting sub- clause (3)

CLAUSE 40

THAT clause 40 be amended in sub- clause (2) by deleting the words “ Article 206 (1) (b)” appearing immediately after the words “accordance with” and substituting therefor the words “ Article 206) 1)”

Agreed


CLAUSE 41

THAT clause 41 be amended in paragraph (e) of sub- clause (2), by inserting the words “including statements on processes and systems audit” immediately after the words “of the Auditor General”

Agreed

MIN.NO. DCF/155 /2015 ADJOURNMENT

The Chairperson adjourned the meeting at 1.20 p.m.

Signed.....

Chairperson

Date.....