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TENTH PARLIAMENT- FIFTH SESSION, 2011

REPORT OF THE DEPARTMENTAL COMMITTEE -I  
ON LABOUR AND SOCIAL WELFARE ON  
THE INDUSTRIAL TRAINING (AMEMENDMENT) BILL 2009.

Paper Hand

By the Chairperson of the Departmental Committee on Labour & Social Welfare while seconding the 2nd Second Reading of the Industrial Training (Amendment) Bill, 2009 on Tuesday, 19th July, 2011.

Clerks Chambers,  
Parliament Buildings  
Nairobi.

*[Signature]*  
19/7/11

July, 2011

## PREFACE

**Mr. Speaker Sir,**

The Departmental Committee on Labour and Social Welfare was constituted on 17<sup>th</sup> June 2009 during the Third Session of Tenth (10<sup>th</sup>) Parliament pursuant to provisions of Standing Orders 198 (1). The Committee executes its mandate in accordance with the provisions of Standing Order 198 (3), from which it draws its mandate 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 the Ministries and Departments and the effectiveness of the implementation;
- c) study and review all legislation after First Reading subject to the exemptions under Standing Order 101 A (4);
- d) study and review all legislation referred to it;
- e) study, assess and analyse the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;
- f) 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 or a Minister; and
- g) Make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

The Committee is mandated to consider the following issues; Labour, Trade Union Relations National manpower policy and development, Promotion of self employment in micro and small enterprise, National Social Security Fund (NSSF), National Productivity Centre. Gender, Children and Social Development Policies Mainstreaming, Women Enterprise Development Fund, Coordination of volunteer services, Social welfare for Vulnerable Groups, Community Development Programmes, Institutions for Children's Care and Development, Culture and

National Heritage, Disaster Management Policies and Programmes, Coordination of resettlement and mitigation programme for Internally Displaced Persons (IDPs), Youth Affairs and Sports among others.

In executing its mandate, the Committee oversees the following Ministries:

- i. Ministry of Labour and Human Resource;
- ii. Ministry of State for Youth Affairs and Sports;
- iii. Ministry of Gender and Children Development;
- iv. Ministry of State for National Heritage and Culture and
- v. Ministry of State for Special Programmes.

The Departmental Committee on Labour and Social Welfare comprises the following Members:-

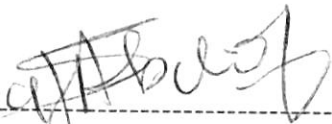
- i. The Hon. Sophia Abdi Noor, M.P. – **Chairperson**
- ii. The Hon. Lenny Kivuti, M.P. – **Vice - Chairperson**
- iii. The Hon. Elijah Lagat, M.P.
- iv. The Hon. Joseph Oyugi Magwanga, M.P.
- v. The Hon. Adan Keynan, M.P.
- vi. The Hon. Gideon Konchella, M.P.
- vii. The Hon. Alfred B. Odhiambo, M.P.
- viii. The Hon. Clement Waibara, M.P.
- ix. The Hon. Pollyns Ochieng, M.P.
- x. The Hon. Jackson Kiptanui, M.P.
- xi. The Hon. Charles Keter, M.P.

**Mr. Speaker Sir,**

In considering the Bill, the Committee received a comprehensive brief from the Minister and the officers. The Committee later held meetings with the Legal Counsel where it received presentations and other views. The Minister was accompanied by the Permanent Secretary in the Ministry and other technical Officers.

## **Acknowledgement**

The Committee wishes to thank the Office of the Honourable Speaker and the Liaison Committee for the necessary support extended to it in the execution of its mandate. The Office of the Clerk for providing the necessary logistical and technical support, the Minister for Labour, the Permanent Secretary and the Technical Staff who appeared before the Committee for providing the necessary information and responding to issues raised by Members during the deliberations, of the Industrial Training (Amendment) Bill 2009.



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**HON SOPHIA ABDI NOOR MP**

**CHAIRPERSON**

**DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE**

## **Introduction**

The Departmental Committee on Labour and Social Welfare and the Minister for Labour held meetings to deliberate on the amendments to the industrial training (amendment) bill, 2009.

## **Conclusion**

After long deliberations the following amendments were agreed at, to address the following issues;-

- The Bill to provide for the devolution of the operations of the bodies created.
- Putting into consideration the Constitutional establishment of the Counties.
- The Authority to have powers to establish other branches or offices anywhere in Kenya, necessary for the proper discharge of its functions under this Act.)
- The Bill to regulate the compositions of the bodies created.
- (Apart from members being appointed to represent employers, employees and other interests, there is no direction given as to their qualifications. It would be prudent to state the kind of qualification and experience required for that purpose.)
- The training levy fund has been institutionalized and its importance for the running of the industrial training programs.
- The Fund to be operated by the board and prudent to have more people with different experiences to manage the Fund.)

**THE PROPOSED AMENDMENTS TO THE INDUSTRIAL TRAINING (AMENDMENT) BILL, 2009**

The Chairperson, Departmental Committee Labour and Social Welfare to move the following amendments to the Industrial Training (Amendments) Bill 2009 during the Committee stage:

**CLAUSE 2**

**THAT**, Clause 2 of the Bill be amended by -

- (a) by deleting the words “other trainee” appearing on the second line of the definition of the term “employee”.
- (b) by deleting the definition of employer and substituting therefor the following definition  
“employer” means any person, Government or public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company and includes an heir, successor, assignee or transferee of an employer;
- (c) by deleting the definition of the term “Minister” and substituting therefor the following new definition-  
“Minister” means the Minister responsible for matters relating to Labour

**CLAUSE 3**

**THAT**, Clause 3 of the Bill be amended –

- (a) by inserting a full stop at the end of sub clause (5);
- (b) by inserting the following new section immediately after section 3 –

Headquarters      3A (1) The headquarters of the Authority shall be in  
Nairobi or any other place as determined by the Board with the  
approval of the Minister.

(2) The Authority may establish other branches in any place in  
Kenya.

- (c) by renumbering clause 3A as 3B;
- (d) in the new clause 3B by inserting the following new paragraph immediately after paragraph (k) –  
  
(k) establishing and managing industrial training centres;
- (e) by renumbering paragraph (k) as (l).

## CLAUSE 4

THAT, Clause 4 of the Bill be amended –

- (a) by deleting paragraph (b) and substituting therefor the following new paragraph –
- (b) by deleting subsection (1) and substituting therefor the following new section –
  - 4 (1) There shall be a National Industrial Training Board consisting of a Chairman and ten other members appointed by the Minister, as follows –
    - (a) three persons nominated by the Federation of Kenya Employers;
    - (b) three persons nominated by the Central Organisation of Trade Unions (Kenya);
    - (c) the Permanent Secretary for the Ministry responsible for matters relating to labour;
    - (d) the Permanent Secretary for the Ministry responsible for matters relating to science and technology;
    - (e) the Permanent Secretary for the Ministry responsible for matters relating to finance;
    - (f) One other person appointed by the Minister to represent other interests.
- (c) by inserting the following new sub-section (2), (3) and (4)
  - (2) the members of the Board appointed under subsection (1) (c) to (h) may nominate persons to represent them on the Board.
  - (3) No person shall be eligible for appointment as chairman or member of the Board unless that person –
    - (a) has at least five years experience in matters relating to technical education, technology, finance, law, human resource management, financial management, public administration, public policy advocacy or education administration; and
    - (b) has a proven record of personal integrity, competency, suitability and accountability;
  - (4) In appointing the members of the Board, the Minister shall ensure that not more two thirds of the members are of one gender and at least one person to represent persons with disabilities
- (d)(c) by deleting paragraph (c) (e) by renumbering the existing subsections (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12).  
as (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15).
- (f) by deleting sub-section (12) and replacing it with the following sub section;
  - (12) The Board may co-opt to serve on it for such length of time as it thinks fit any number of persons whose assistance or advice it may require, but a person so co –

opted shall neither be entitled to vote at a meeting of the Board nor be counted as a member thereof for the purpose of forming a quorum.

(g) by renumbering sub clause (13) as (16)

#### **CLAUSE 5**

**THAT**, Clause 5 of the Bill be amended by deleting paragraph (b) and substituting therefor  
2) A committee shall consist of seven persons appointed in writing by the Board of whom-

(a) two shall be chosen to represent employers in the industry concerned:

(b) Two shall be chosen to represent employees in the industry concerned; and

(c) Three shall be chosen to represent other interest, and the Council shall appoint a chairman and a vice-chairman from among the members of the Committee chosen under paragraphs (c) and (a) respectively.

#### **CLAUSE 6**

**THAT**, Clause 6 of the Bill be amended –

(a) in section 4A (e) by inserting the word “funds” immediately after the word “levy”

(b) in paragraph 4C(4) by deleting the phrase “No person” in subsection 4C(4) and substituting therefor the phrase “A person shall not”

(c) in section 4C (4) (a) by inserting the words “administration, finance ” immediately after the word “technology”;

(d) in section 4G –

(i) by inserting the following new paragraphs (c) and (d) immediately after paragraph (b) –

(c) Trade testing fees;

(d) Course and hostel fees;

(ii) by renumbering paragraphs (c), (d), (e) and (f) as (e), (f), (g) and (h) respectively.

#### **CLAUSE 9**

**THAT**, Clause 9 of the Bill be amended by deleting the expression (2) appearing on line two of sub section (5) and substituting therefor the expression (4).



## **CLAUSE 10**

**THAT**, Clause 10 of the Bill be amended –

- (a) by deleting paragraph (b) and substituting therefor the following new paragraph -
- (b) by deleting sub-section (1) and substituting therefor the following new sub-sections –
  - (1) There is established a fund in respect of each industry to be known as a Training Levy Fund;
  - (2) There shall be paid into the Fund all industrial training levy contributions for each industry.
- (c) by renumbering the existing sub-section (2) as sub-section (3)
- (d) by deleting paragraph (c) (ii) and substituting therefor the following paragraph –
  - (ii) the Director- General may, subject to the directions of the Board, make payments out of a Fund for any of the following purposes-

## **CLAUSE 13**

**THAT**, Clause 13 of the Bill be amended in section 7B by deleting sub-section (5) and substituting therefor the following new sub-section –

- (5) A person who purports to be on industrial attachment or an employer offering industrial attachment under this Act, otherwise than as provided by this section shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months or to both.

## **CLAUSE 29**

**THAT**, Clause 29 of the Bill be amended in paragraph (a) (v) by deleting the word “therefore” appearing on the last line and inserting the word “therefor”.

## **CLAUSE 33**

**THAT**, Clause 33 of the Bill be amended by deleting the word “principle” appearing on the first line and substituting therefor the word “principal”.

## **CLAUSE 39**

**THAT**, Clause 39 of the Bill be amended –

- (a) by deleting the word “Principal” appearing on the first line and substituting therefor the word “principal”;
  - (b) by Inserting the following new section immediately after section 34.
- 35.(1) Any person who at the commencement of this Act was a Chairman, Vice Chairman or member of the Council shall on the commencement date be deemed to be the Chairman, Vice Chairman or member of the Board respectively until a new Board is constituted under this Act.

**SCHEDULE**

The schedule be amended in paragraph 5(1) deleting the word “An” appearing on the first line and substituting therefor the word “Any”.

**MINUTES OF THE NINETY NINTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY JUNE 23, 2011 IN THE RESTAURANT CONTINENTAL HOUSE PARLIAMENT BUILDINGS AT 10.00AM.**

**MEMBERS PRESENT**

Hon. Sophia Abdi Noor, M.P.                    - **Chairperson**  
Hon. Charles Keter, MP.  
Hon. Joseph Magwanga, M.P.  
Hon. Jackson Kiptanui, M.P.  
Hon. Alfred Odhiambo, M.P.  
Hon. Pollyns Ochieng, M.P.  
Hon. Elijah Lagat, M.P.  
Hon. Gideon Konchella, M.P

**ABSENT**

Hon. Lenny Kivuti, M.P.                    - **Vice Chairperson**  
Hon. Clement Waibara, M.P.  
Hon. Aden Keynan, M.P.

**IN – ATTENDANCE – NATIONAL ASSEMBLY**

John Wanyoike – Clerk Assistant

**PRAYERS**

**MIN 179/2011**

**CONFIRMATION OF THE PREVIOUS MINUTES**

Minutes of the ninety sixth sitting were proposed by Hon. Sophia Abdi Noor, MP and seconded by Hon. Pollyns Ochieng, MP.

**MIN 180/2011 CONSIDERATION OF THE AMENDMENTS TO THE INDUSTRIAL TRAINING (AMENDMENT) BILL, 2009**

The Hon Sospeter Ojamong M.P. Assistant Minister for Labour accompanied by the Permenant Secretary Ms Beatrice Kituyi CBS

Ms Beatrice Koech –Deputy Secretary.

Ms Kimenyi -Director Industrial Training.

Mr Awour – Chairman National Industrial Training

Informed the committee that;-

The Bill will enhance the Institution and make it more competitive as it has been run down, that they were built 30 years ago.

The members and the Minister went through the Bill Clause by Clause and agreed on the following;-

## **CLAUSE 2**

**THAT**, Clause 2 of the Bill be amended by -

- (a) by deleting the words “other trainee” appearing on the second line of the definition of the term “employee”.
- (b) by deleting the definition of employer and substituting therefor the following definition  
“employer” means any person, Government or public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company and includes an heir, successor, assignee or transferee of an employer;
- (c) by deleting the definition of the term “Minister” and substituting therefor the following new definition-  
“Minister” means the Minister responsible for matters relating to Labour

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- (a) by inserting a full stop at the end of sub clause (5);
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Headquarters                      3A (1) The headquarters of the Authority shall be in Nairobi or any other place as determined by the Board with the approval of the Minister.  
(2) The Authority may establish other branches in any place in Kenya.

- (c) by renumbering clause 3A as 3B;
- (d) in the new clause 3B by inserting the following new paragraph immediately after paragraph (k) –  
(k) establishing and managing industrial training centres;
- (e) by renumbering paragraph (k) as (l).

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**THAT**, Clause 4 of the Bill be amended –

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- (a) three persons nominated by the Federation of Kenya Employers;
- (b) three persons nominated by the Central Organisation of Trade Unions (Kenya);
- (c) the Permanent Secretary for the Ministry responsible for matters relating to labour;
- (d) the Permanent Secretary for the Ministry responsible for matters relating to science and technology;
- (e) the Permanent Secretary for the Ministry responsible for matters relating to finance;
- (f)
- (g) One other person appointed by the Minister to represent other interests.

(c) by inserting the following new sub-section (2), (3) and (4)

(2) the members of the Board appointed under subsection (1) (c) to (h) may nominate persons to represent them on the Board.

(3) No person shall be eligible for appointment as chairman or member of the Board unless that person –

- (a) has at least five years experience in matters relating to technical education, technology, finance, law, human resource management, financial management, public administration, public policy advocacy or education administration; and
- (b) has a proven record of personal integrity, competency, suitability and accountability;

(4) In appointing the members of the Board, the Minister shall ensure that not more two thirds of the members are of one gender and at least one person to represent persons with disabilities

(d)(c) by deleting paragraph (c) (e) by renumbering the existing subsections (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12).

as (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15).

(f) by deleting sub-section (12) and replacing it with the following sub section;

(12) The Board may co-opt to serve on it for such length of time as it thinks fit any number of persons whose assistance or advice it may require, but a person so co – opted shall neither be entitled to vote at a meeting of the Board nor be counted as a member thereof for the purpose of forming a quorum.

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- (c) in section 4C (4) (a) by inserting the words “administration, finance ” immediately after the word “technology”;
- (d) in section 4G –
  - (i) by inserting the following new paragraphs (c) and (d) immediately after paragraph (b) –
    - (c) Trade testing fees;
    - (d) Course and hostel fees;
  - (ii) by renumbering paragraphs (c), (d), (e) and (f) as (e), (f), (g) and (h) respectively.

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**THAT**, Clause 13 of the Bill be amended in section 7B by deleting sub-section (5) and substituting therefor the following new sub-section –

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35.(1) Any person who at the commencement of this Act was a Chairman, Vice Chairman or member of the Council shall on the commencement date be deemed to be the Chairman, Vice Chairman or member of the Board respectively until a new Board is constituted under this Act.

**SCHEDULE**

The schedule is amended in paragraph 5(1) deleting the word “An” appearing on the first line and substituting therefor the word “Any”.

**MIN 181/2011 FURTHER AMMEMNDMENTS.**

The committee during the deliberations resolved that wherever the words Principal Secretary may appear should read the permanent Secretary and wherever the words Cabinet Secretary should read the Secretary to the Cabinet. until when the new offices have been established and operationalised.

The committee resolved that the ammendments be forwarded to theParliamentary Legal Counsel for moderation.

**MIN 182/2011 ADJOURNMENT**

And there being no other business, the Chairperson thanked all the Members and adjourned the meeting at two o'clock.

Signature.......... Date.....  
Chairperson